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WASHINGTON, DC

[Two Sessions]

WHEN: May 14, 1996 at 9:00 am
May 21, 1996 at 9:00 am

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6893 of May 7, 1996

Mother's Day, 1996

By the President of the United States of America

A Proclamation

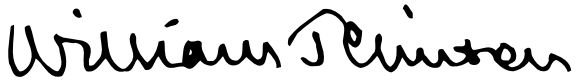
America's mothers hold a special place in our hearts, providing the lessons and care that have enabled generations of children to embrace the opportunities of this great land. They embody the compassion, devotion, and energy that have always defined our national character, and their daily efforts anchor our country's commitment to the fundamental values of respect and tolerance. Mothers impart both the strength that enables us to face our challenges and the love that comforts and sustains us.

As we honor our Nation's mothers for past and present accomplishments, we recognize that mothers' roles have changed significantly in recent years. Today, mothers are CEOs and teachers, physicians and nurses, elected officials and PTA presidents, police officers and volunteers, homemakers and heads of households. Many serve on the front lines of the struggle against violence and poverty. These women—problem-solvers, caregivers, and teachers—are using their talents in every sector of our society, helping all Americans to look forward with hope and faith in the future.

Mother's Day has long been a welcome opportunity to celebrate motherhood and to remember our mothers—whether biological, foster, or adoptive. To reflect on all we have gained from our mothers' guidance and to remember their sacrifices, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as ''Mother's Day'' and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 12, 1996, as Mother's Day. I urge all Americans to express their gratitude for the many contributions made by our mothers and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.



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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–94–015A]

Sheep and Wool Promotion, Research, Education, and Information: Certification and Nomination Procedures for the National Sheep Promotion, Research, and Information Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule outlines the procedures for determining the eligibility of sheep producer organizations, sheep feeder organizations, and organizations of importers of sheep and sheep products to make nominations for appointment to the National Sheep Promotion, Research, and Information Board (Board), and also outlines the procedures for making such nominations to the Board as provided for in the Sheep Promotion, Research, and Information Act of 1994. The Board would administer an industry-funded promotion, research and information order authorized by the Act.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456, telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document: Proposed Rule—Sheep and Wool Promotion, Research, Education, and Information Order (Order) published June 2, 1995, (60 FR 28747).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and request a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final action on small entities. This rule pertains only to (1) the procedures for establishing the eligibility of organizations to nominate sheep producers, sheep feeders and importers of sheep and sheep products for appointment to the Board; and (2) the procedures for submitting such nominations. AMS has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained herein were submitted to OMB for approval, and were assigned OMB Number 0581–0093. This action sets forth the procedures for establishing the eligibility of organizations to nominate sheep producers, sheep feeders, and importers of sheep and sheep products to the initial Board, and the procedures for submitting such nominations. The information collection required by this action and necessary for implementation of these procedures includes the following:

(1) An application for certification of organization, to be completed by eligible organizations that request certification in order to be eligible to nominate producers, feeders, or importers to the Board. The estimated number of respondents is 70 (with each organization submitting one response), and the estimated average reporting burden is 0.5 hour per response;

(2) A nomination form by which certified organizations will nominate producers, feeders, or importers for membership on the Board. The estimated number of respondents is 60 for the first year of the Order and 20 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response; and

(3) An advisory committee membership background information form, to be completed by candidates nominated by certified organizations for appointment to the Board. The estimated number of respondents is 240 during the first year of the Order and 80 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response.

Background

The Act (7 U.S.C. 7101–7111) provides for the establishment of a coordinated program of promotion, research, education, consumer information, industry information, and producer information designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets and develop new markets and uses for sheep and sheep products.

The program would be funded by a mandatory assessment on domestic producers, feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers would be assessed 1 cent per

pound on live sheep, the equivalent of 1 cent per pound of live sheep for sheep products as well as 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep and sheep products of his or her own production, and who markets the processed products, would be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold. All assessments may be adjusted in accordance with the applicable provisions of the Act.

The Board would be comprised of 85 sheep producers, 10 feeders and 25 importers. The duties and responsibilities of the Board would be specified in the Order.

The Act provides that the Secretary shall certify or otherwise determine the eligibility of producer, feeder and importer organizations to nominate members to the Board to ensure that nominees represent the interests of sheep producers, sheep feeders and importers of sheep and sheep products. The Act also provides that States that are represented by only 1 producer member may have an alternate producer member appointed to the Board to ensure representation at Board meetings. Certification procedures are set forth in this final rule. The certification of sheep producer organizations will be based on a factual report containing information required by the Act, including but not limited to (1) the geographic territory covered by the active membership of the organization; (2) the nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization; (3) evidence of stability and permanency of the organization; (4) sources from which the operating funds of the organization are derived; (5) the functions of the organization; and (6) the ability and willingness of the organization to further the aims and objectives of the Act. A primary consideration in determining eligibility shall be whether the membership of the organization consists primarily of producers who own a substantial quantity of sheep and an interest of the organization is in the production of sheep.

The certification of feeder and importer organizations will also be based on a factual report containing information required by the Act. The criteria for determining eligibility for certification are (1) that the organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization; (2) that there is evidence of stability and permanency of the organization; and (3) that the organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

The Secretary will have the authority to require verification of any information submitted to determine the eligibility to nominate persons for membership on the Board.

Information obtained by the Secretary will be kept confidential, except that the Secretary can release general statements based upon data obtained from a number of organizations.

The proposed certification and nomination rule was published on June 2, 1995, in the Federal Register (60 FR 28747) as part of the proposed Sheep and Wool Promotion, Research, Education Information Order with a request for public comments to be submitted by July 17, 1995. The Department received four written comments concerning the proposed certification and nomination procedures from individual sheep producers and sheep feeders and an importer organization. The commenters generally supported the proposed rule with certain qualifications. One commenter specifically supported the certification and nomination process as published on June 2, 1995.

The substantive changes suggested by commenters are discussed below. Also, the Department has made other minor changes of a nonsubstantive nature for purposes of clarity and accuracy including clarification of § 1280.403 (a) and (b) by changing references to ''State producer organizations'' to read ''sheep producer organizations.'' For the reader's convenience, the discussion is organized by topic heading of the final rule.

Section 1280.403 Certification of Eligibility

One commenter stated that the requirements for importer certification described in section 1280.403(c) in the proposed rule would not permit importer organizations to be certified, because most importer organizations do not include (1) * * *a significant number of importers in relation to the total membership of the organization * * * and (2) most organizations or associations, would not meet the requirement to have * * * a primary and overriding interest in representing the importer segment of the sheep industry because of the diverse nature of their membership. The commenter suggests that the requirements be clarified to permit any organization to be certified as eligible to nominate importers to the Board if it shows that its membership includes importers of sheep or sheep products who have an interest in representing the importer segment of the sheep industry. The Act establishes the criteria for certifying organizations as eligible to nominate importers to the Board. The Department will follow that criteria in certifying organizations. If the Secretary does not certify any importer organization, this final rule permits the Secretary to use alternative means to obtain importer nominations for Board appointment. Accordingly, we have not adopted this suggestion.

One commenter suggested that section 1280.403(c)(1) in the proposed Order should be clarified to ensure that only sheep industry organizations that are made up predominantly of feeders can make feeder nominations. The Act provides the criteria for the Secretary to use in determining whether sheep feeder organizations are eligible to submit nominations for appointment to the Board. The Act requires that (1) the organization's active membership include a significant number of feeders in relation to the total membership of the organization; (2) there be evidence of stability and permanency of the organization; and (3) the organization have a primary and overriding interest in representing the feeder segment of the sheep industry. The Department believes that the commenter's suggestion would require an organization to have a higher concentration of feeders than the Act requires in order to qualify for certification and that this could reduce the opportunity for some feeder organizations to be certified. Accordingly, we have not adopted this suggestion.

Section 1280.409 Initial Board Membership.

One commenter suggested that the industry representatives on the Board be elected by the members of each industry segment rather than be appointed by the Secretary, because the Secretary is unfamiliar with the abilities of individuals in the various industries. The Act requires the Secretary to appoint the Board. Furthermore, the Department believes that the certification and nomination process would give the Secretary the opportunity to appoint members who best represent each industry segment because certified organizations comprised of members of those segments will submit nominations for appointment. The commenter also

suggested that the Board should be realigned based on the sheep numbers in and contributions made by each industry segment. The Act establishes the membership of the Board, which consists of 85 producers, 10 feeders and 25 importers. The Act does not authorize realignment of the Board to be based on sheep numbers or contributions made by each industry segment. Accordingly, we have not adopted these suggestions.

In summary, this final rule adopts provisions of the proposed rule with only minor changes made for purposes of clarity and accuracy.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because (1) the Act requires implementation of the Order if the Order is approved by sheep and wool industry; (2) the sheep and wool industry approved the Order in the February 6, 1996, referendum; (3) the Secretary must appoint the initial Board to administer the program. Because these rules implement the certification and nomination procedures for Board appointments, this final rule should become effective on the day following the date of publication to permit the Board to be appointed as quickly as possible. Accordingly, no useful purpose would be served in delaying the effective date. Additionally, these rules were published as part of a proposed rule in the June 2, 1995, Federal Register (60 FR 28747) and interested persons were afforded a 30 day comment period on the proposed certification and nomination procedures. This final rule is effective on the day following the date of publication in the Federal Register.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1280 is amended as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. In Part 1280, Subpart C is added to read as follows:

Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Sheep Feeders and Importers of Sheep and Sheep Products for Appointment to the National Sheep Promotion, Research, and Information Board

Subpart C—Procedures for Certification of Organizations and Nominations of Sheep Producers, Sheep Feeders, and Importers of Sheep and Sheep Products for Appointment to the National Sheep Promotion, Research, and Information Board

§ 1280.400 General.

The Secretary shall determine which organizations are certified as eligible to nominate sheep producers and producer alternates, sheep feeders, and importers of sheep and sheep products (excluding importers that import only raw wool), for appointment to the Board. The making and receiving of the nominations shall be conducted in accordance with this subpart and the Order.

§ 1280.401 Definitions.

As used in this subpart:

(a) The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111, Public Law 103–407, 108 Statute 4210, enacted October 22, 1994, and any amendments thereto.

(b) The term *Board* means the National Sheep Promotion, Research, and Information Board.

(c) The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

(d) The term *Department* means the U.S. Department of Agriculture.

(e) The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

(f) The term *importer* means any person who imports sheep or sheep products into the United States.

(g) The term *Livestock and Seed Division* means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

(h) The term *National feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

(i) The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(j) The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

(k) The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

(l) The term *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated to act in the Secretary's stead.

(m) The term *sheep* means ovine animals of any age, including lambs.

(n) The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

(o) The term *State* means each of the 50 States.

(p) The term *unit* means each State, group of States or class designation that is represented on the Board.

(q) The term *United States* means the 50 States and the District of Columbia.

(r) The term *wool* means the fiber from the fleece of a sheep.

(s) The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

§ 1280.402 Administration.

The Livestock and Seed Division shall have the responsibility of administering the provisions of this subpart.

§ 1280.403 Certification of eligibility.

(a) *Sheep producer organizations. Requirements for certification.* The Secretary shall certify any sheep producer organization that the Secretary determines meets the criteria established under paragraphs (a) and (b) of this section to be eligible for certification to nominate producer members and alternate producer members to the Board. Certification for sheep producer organizations shall be based upon:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(b) *Primary considerations.* A primary consideration in determining the eligibility of a producer organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

(c) *Feeder and importer organizations. Requirements for certification.* The Secretary shall certify any national feeder organization and qualified importer organization that the Secretary determines meets the following criteria as eligible to nominate feeders or importers to the Board:

(1) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(2) There is evidence of stability and permanency of the organization; and

(3) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(d) The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1280.404 Application for certification.

Any organization that meets the eligibility criteria for certification specified in § 1280.403 is entitled to apply to the Secretary for certification of eligibility to nominate sheep producers, sheep feeders, or importers of sheep and sheep products for appointment to the Board. The Secretary may require third-party verification of information submitted by organizations, in determining their eligibility. To apply, an organization must submit a completed ''Application for Certification of Organization'' form. Copies may be obtained from the Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. (Telephone: 202/720–1115)

§ 1280.405 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require additional information in order to ascertain whether the organization may remain certified or eligible to make nominations, and may require third-party verification of information submitted by organizations in determining their eligibility to continue making nominations.

§ 1280.406 Notification of certification and the listing of certified organizations.

Organizations shall be notified in writing whether they are eligible to nominate sheep producers, feeders, or importers as members to the Board or not. A copy of the certification or eligibility determination shall be furnished to certified organizations. Copies shall also be available for inspection in the Livestock and Seed Division.

§ 1280.407 Solicitation of nominations for appointment to the Board.

In general, as soon as practicable after this subpart becomes operational, the Secretary shall solicit and obtain nominations for appointment to the initial Board from certified producer, feeder, and importer organizations.

(a) Initially established board. (1) *Producer and alternate nominations.* The Secretary shall solicit from organizations certified under § 1280.403 (a) and (b) nominations for each producer or alternate member seat on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) *Feeder and importer nominations.* The Secretary shall solicit, from organizations certified under § 1280.403(c), nominations for each feeder or importer member on the initially established Board to which a unit is entitled. If no such organization exists, the Secretary shall solicit nominations for appointment in such manner as the Secretary determines is appropriate.

(b) [Reserved]

§ 1280.408 Nomination of members for appointment to the Board.

(a) In general. All nominations to the Board shall be made in the following manner:

(1) *Producers.* The Secretary shall appoint sheep producer and alternate members to represent units as specified under § 1280.409 (a) and (b) of this subpart, from nominations submitted by organizations certified under § 1280.403. A certified organization may only submit nominations for producer representatives and alternates, if appropriate, from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization must submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment. If a producer member and a producer alternate member are to be appointed to represent the unit, at least three nominations must be submitted for the two positions.

(2) *Feeders.* The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.409(c), from nominations submitted by qualified national organizations certified under § 1280.403 that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which the feeder sheep industry is entitled to representation.

(3) *Importers.* The Secretary shall appoint importers to seats established under § 1280.409(d) from nominations submitted by qualified organizations certified under § 1280.403 that represent importers of sheep and sheep products. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board for which importers are entitled to representation.

(4) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. The Secretary will solicit nominations for subsequent appointments, and the Board will secure the nominations from certified producer organizations. Certified feeder and importer organizations shall submit the names of feeder and importer nominees directly to the Secretary. Nominations should be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in this section. In the case of vacancies caused by the death, removal,

resignation, or disqualification of any member of the Board, the Secretary will appoint a successor from the most recent list of nominations for the position, from nominations submitted by the Board for producers or from certified feeder or importer organizations, for feeders and importers.

(5) Where there is more than one eligible organization that represents producers in a State or unit, or represents feeders, or importers, they may caucus and jointly nominate qualified persons for each position representing that State or unit on the Board for which a producer, feeder or importer member is to be appointed. If they cannot agree on any such nominations, or if no caucus is held, each eligible producer, feeder or importer organization may submit to the Secretary nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment to represent that unit.

(6) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraphs (a), (b), or (c) of this section.

(b) *Official nomination forms.* A ''Nomination for Appointment to the National Sheep Promotion, Research, and Information Board'' must be used to nominate producers, feeders, or importers for appointment to the Board. An ''Advisory Committee Membership Background Information'' form must be completed by each nominee listed on the ''Nomination for Appointment to the National Sheep Promotion, Research, and Information Board'' form and must be attached to that form. Official nomination forms and additional information on nominations are available from the Marketing Programs Branch; Livestock and Seed Division; AMS–USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456 (Telephone: 202/720–1115).

(c) The Secretary may reject any nomination submitted under paragraph (a) of this section. If there are insufficient nominations from which to appoint members to the Board because the Secretary rejected the nominations submitted by a State or unit, the State or unit shall submit additional nominations, as provided in paragraph (a) of this section.

§ 1280.409 Initial Board membership.

(a) *Base membership.* The number of producer members appointed to the Board from each State or unit shall be allocated.

Alabama 1; Alaska 1; Arizona 1; Arkansas 1; California 5; Colorado 4; Connecticut 1; Delaware 1; Florida 1; Georgia 1; Hawaii 1; Idaho 2; Illinois 1; Indiana 1; Iowa 2; Kansas 1; Kentucky 1; Louisiana 1; Maine 1; Maryland 1; Massachusetts 1; Michigan 1; Minnesota 2; Mississippi 1; Missouri 1; Montana 5; Nebraska 1; Nevada 1; New Hampshire 1; New Jersey 1; New Mexico 2; New York 1; North Carolina 1; North Dakota 2; Ohio 1; Oklahoma 1; Oregon 2; Pennsylvania 1; Rhode Island 1; South Carolina 1; South Dakota 4; Tennessee 1; Texas 10; Utah 3; Vermont 1; Virginia 1; Washington 1; West Virginia 1; Wisconsin 1; and Wyoming 5.

(b) *Alternate members.* A unit represented by only one producer member may have an alternate producer member appointed to ensure representation at meetings of the Board.

(c) *Feeders.* The feeder sheep industry shall be represented by ten members.

(d) *Importers.* Importers shall be represented by 25 members.

§ 1280.410 Length of appointment to the initial Board.

When the Secretary appoints the members to the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for one year, one-third shall serve for two years, and one-third shall serve for three years. No person may serve more than two consecutive three year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.411 Acceptance of appointment.

Producers, feeders and importers nominated to the Board must confirm in writing their intention to serve if appointed, to disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board and to withdraw from participation in deliberations, decision-making, or voting on matters that concern such disclosed relationships.

§ 1280.412 Verification.

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate sheep producers, feeders, or importers for appointment to the Board.

§ 1280.413 Confidential treatment of information.

All documents submitted in accordance with this subpart shall be kept confidential by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the Order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1280.414 Paperwork Reduction Act assigned number.

The control number assigned to the information collection requirements in part 1280 by OMB pursuant to the Paperwork Reduction Act of 1980 is OMB 0581–0093.

Dated: May 2, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–11532 Filed 5–8–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1280

[No. LS–95–010]

Sheep Promotion Research, and Information Program: Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of a Sheep and Wool Promotion, Research, Education, and Information Order (Order), which will establish a national, industry-funded sheep and wool promotion, research, and information program. This final rule establishes the collection and remittance process, puts into effect the reporting requirements, identifies and establishes the Harmonized Tariff Schedule (HTS) classification numbers, conversion factors, and assessment rates for imported sheep, sheep meat, wool, and wool products subject to assessment, establishes procedures for calculating, collecting, and remitting assessments on imported sheep, sheep meat, wool, and wool products and establishes the basis for excluding certain imported sheep and sheep products from assessment. Because the

Sheep Promotion, Research, and Information Act of 1994 (Act) provides that imported raw wool will be exempted from the collecting provisions, imported raw wool is not subject to assessment.

EFFECTIVE DATE: This final rule will become effective July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, DC 20090–6456, telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Sheep Promotion and Research Program: Rules and Regulations—60 Federal Register (FR) 51737 (October 3, 1995).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceeding in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final action on small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

There are an estimated 87,350 domestic sheep producers and feeders and an estimated 700 remittance persons who will be subject to the rules and regulations issued pursuant to the Order. There are also an estimated 9,000 importers who will become subject to these rules and regulations. Nearly every sheep producer, feeder, and importer will be classified as a small business under the criteria established by the Small Business Administration (13 CFR § 121.601).

The Act provides for the establishment of a coordinated program of promotion and research designed to strengthen the sheep industry's position in the marketplace and to maintain and expand foreign and domestic markets and uses for sheep and sheep products. This program will be financed by assessments on domestic and imported sheep and sheep products which includes wool and wool products. Pursuant to the Act, an Order approved in referendum was published on May 2, 1996, in the Federal Register (XX FR XXXXX). The final Order became effective on May 3, 1996, except for provisions concerning assessments. Those Order provisions become effective July 1, 1996.

This final rule establishes the collection and remittance process, puts into effect the reporting requirements of an Order, identifies and establishes HTS classification numbers, conversion factors, and assessment rates for imported sheep and sheep products (sheep meat, wool, and wood products) subject to the assessment, establishes procedures for calculating, collecting, and remitting assessments on imported sheep, sheep meat, wool, and wool products and establishes the basis for excluding certain imported sheep and sheep products from assessment. Because the Act exempts imported raw wool from the collecting provisions, imported raw wool is not a subject to assessment.

This final rule will implement applicable Order provisions in the manner provided therein. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), OMB has approved the information collection and recordkeeping requirements contained in Part 1280 for domestic producers, feeders, handlers, and processors of sheep and wool, and assigned control number 0581–0093.

Based on comparable research and promotion programs, it should require approximately 0.5 hours per response for producers, feeders, handlers, and persons other than the person making payment to the producer, feeder, or handler, to complete a reporting form on a monthly basis.

For importers, the Department of Agriculture (Department) intends to rely to a great extent on records maintained by the U.S. Customs Service (Customs) and by importers under Customs's requirements for its administration and enforcement of the provisions of the final regulations.

Any person subject to the assessment, collection, and remittance provisions of the Act and the Order would be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the Order and these regulations. Such books and records must be maintained for at least 2 years beyond the fiscal period of their applicability.

Background

The Act (7 U.S.C. 7101–7111) enacted on October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program designed to strengthen the sheep industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for sheep and sheep products and to develop new markets and uses for sheep and sheep products. The program will be funded by assessments on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed 1 cent per pound on live sheep imported and the equivalent of 1 cent per pound of live sheep for sheep products imported as well as 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Order requires that each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products be a collecting person who collects the assessment from the producer, feeder, or handler of sheep or sheep products and passes the collected assessment on to the subsequent purchaser pursuant to the Act. Any person who buys domestic live sheep or greasy wool for processing must collect the assessment from the producer, feeder, or handler and remit it to the National Sheep Promotion, Research, and Information Board (Board). Any person who processes or causes to be processed sheep or sheep products of the person's own production and markets the processed products is required to pay an assessment and to remit that assessment to the Board. Any person who exports live sheep or greasy wool is required to pay an assessment and to remit it to the Board at the time of export. Finally, each person who imports sheep and sheep products, other than imported raw wool, is required to pay an assessment. Customs will collect the assessments on imported sheep and sheep products upon importation and forward them to AMS for disbursement to the Board.

The Order further defines a collecting person as any person who is responsible for collecting an assessment pursuant to the Act, the Order, and these regulations, including processors and any other persons who are required to remit assessments to the Board, except that a collecting person who is a market agency, i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder, shall pass the collected assessment on to the subsequent purchaser pursuant to the Act, the Order and these regulations.

For the purposes of the collection of assessments on imported sheep and sheep products by Customs, the Harmonized Tariff Schedule (HTS) classification numbers published by the United States International Trade Commission (USITC) will be used to identify imported sheep and sheep products that are subject to the assessment. The HTS classification system identifies each category of imported sheep, sheep meat, wool, and products that contain wool fiber by a 10-digit classification number and provides a brief description of the imported product that corresponds to the various classification numbers. Additionally, the HTS classification number may be further divided into multiple fiber categories for products that contain a blend of fibers.

In determining which HTS classification numbers are assessed under this final rule, the Department's primary objectives were to meet the intent of the Act by maximizing participation of imported sheep, sheep meat, wool, and wool products in the assessment collection provisions of the Act and to minimize the burden of administering those provisions. To make certain these objectives would be met, the Department reviewed 5 years, 1989–1993, of historical import data for sheep, sheep meat, wool and products containing wool fibers from the Bureau of Census of the U.S. Department of Commerce. These data are available on CD–ROM, entitled ''International Harmonized System Commodity Classification by Country by Customs District.'' The Department analyzed the total volume of imported sheep, sheep meat, wool, and wool products subject to the assessment by identifying the HTS classification numbers and corresponding conversion factors.

The Department identified over 700 HTS classification numbers during a review of the import library published by the Department's Economic Research Service (ERS). The Department has determined that of the approximately 700 HTS classification numbers, slightly more than 600 are considered active or potentially subject to assessment. These numbers are continually updated, deleted, or expanded, thereby eliminating existing HTS categories or creating new ones. Based on the projected revenue for imported sheep and sheep products, from the slightly more than 600 active HTS classification numbers for sheep and sheep products, the Department identified in the October 3, 1995, Federal Register (60 FR 51737) 340 HTS classification numbers that account for over 99 percent of the total projected import revenues. Accordingly, the Department has limited the collection of assessments to this lower level, thereby not including a significant number of low-volume HTS categories.

Limiting the number of imported sheep and sheep products that would be subject to assessments would reduce the administrative cost and burden on Customs and importers, and would reduce administrative costs to the Board, while allowing the Board to collect the vast majority of potential import assessments consistent with the Act.

The USITC recently published an updated list of all of the HTS classification numbers. Some HTS classification numbers published in the October 3, 1995, proposed rule have been changed and one has been divided into two numbers. In light of the recent update, the Department has expanded the HTS classification numbers that will be subject to the assessment from 340, as initially proposed, to 341. Therefore, the following revisions to Table I, Imported Sheep and Sheep Products Assessment Table, used in the sheep and wool promotion, research and information program were necessary:

Old number	New number	Comment
5703100000	5703100020	Use same conversion factor.
	5703100080	Do.
5705002010	5705002005	Do.
6104591000	6104591005	Do.
6115199020	6115198020	Do.
6115932910	6115939010	Do.
6204693020	6204696020	Do.

Because import assessments are based on a live-weight equivalent for imported sheep meat and degreased wool, or its equivalent for wool and wool products, the Department has decided to use conversion factors developed and published by ERS to convert imported sheep products to the required live-weight equivalents, degreased wool, or degreased wool equivalents, to determine the amount of assessment due on each HTS category upon importation. These conversion factors are available for the over 700 HTS classification numbers and are updated and maintained as an import library. For sheep meat, these conversion factors take into account removal of bone, weight lost in processing or cooking, and the nonsheep components of the sheep products. For wool and products

containing wool fibers, these conversion factors take into account fiber loss during processing, fabric trim loss, and cutting loss for wool, and other non-sheep components of wool and wool products. The Department has decided to use these conversion factors for calculating the assessment because calculating carcass equivalents and wool content for each individual product before entry would be both costly and impractical.

The factors for calculating the assessment on imported sheep, sheep meat, wool, and products containing wool fiber include the (1) HTS classification number, (2) conversion factor, (3) assessment rate as established under the Act, and (4) dressing percentage. Based on a 9-year average, 1980–1989, the average dressing percentage for sheep in the United States is 50.2 percent, as published by ERS in the 1992 edition of Conversion Factors, Weights and Measures of Agricultural Commodities and Their Products.

Imported live sheep require no conversion because each animal will be assessed based on its live weight.

Examples of calculating the assessment on sheep, sheep meat, wool, and products containing wool fibers are as follows:

Example I

Live Sheep

To calculate the assessment for live sheep, an importer would multiply the total weight of imported live sheep by 1 cent per pound. The following example illustrates a typical calculation for imported live sheep:

HTS 0104100000, Live sheep:		
Live Weight		125 lbs
Assessment rate	×	$0.01/lb
Assessment		$1.25

Examples II and III

Sheep Meat

To calculate the assessment for imported sheep meat, an importer would (1) multiply the total weight of imported sheep meat by the conversion to determine the total carcass weight equivalent, then (2) divide the total carcass weight equivalent by 50.2 percent to calculate the live animal equivalent, and (3) multiply the live animal equivalent by 1 cent per pound. The following examples illustrate two typical sheep meat calculations:

1. Sheep Meat (Bone-in)

HTS 0204100000, Carcasses and half carcasses of lamb, fresh or chilled:		
Net Weight		1,000 lbs
Conversion factor	×	1.00
Carcass weight equivalent.	=	1,000 lbs
Average dressing percent.	÷	50.2
Live weight equivalent.	=	1,992.03 lbs
Assessment rate	×	$0.01 lb
Assessment		$19.92

2. Sheep Meat (Boneless)

HTS 0204232000, Boneless lamb:		
Net Weight		1,000 lbs
Conversion factor	×	1.52
Carcass weight equivalent.	=	1,520 lbs
Average dressing percent.	÷	50.2
Live weight equivalent.	=	3,027.89 lbs
Assessment rate	×	$0.01/lb.
Assessment		$30.28

Example IV

Wool Products

To calculate the assessment for imported wool and wool products, an importer would (1) multiply the total weight of wool or wool products imported under each HTS number by the corresponding conversion factor, and (2) multiply the raw clean wool content by the assessment rate. The following example illustrates a typical calculation:

HTS 6201110010, Mens' or boys' overcoats of wool or fine animal hair:		
Net Weight		2,000 lbs
Conversion factor	×	1.0199
Clean wool content	=	2,039.8 lbs
Assessment rate	×	$0.02/lb
Assessment		$40.80

A table in this regulation lists the applicable HTS classification numbers representing imported sheep, sheep meat, wool, and products containing wool fibers subject to assessment, the corresponding conversion factors and the assessment rate per pound and per kilogram for each product, except in the case of imported raw wool, which is exempt from assessment.

This final rule sets forth the collection and remittance process, puts into effect the reporting requirements, identifies and establishes the Harmonized Tariff Schedule (HTS) classification numbers, conversion factors, and assessment rates for imported sheep, sheep meat, wool, and wool products subject to assessment, establishes procedures for calculating, collecting, and remitting assessments on imported sheep, sheep meat, wool, and wool products and establishes that basis for excluding certain imported sheep and sheep products from assessment.

The proposed rule was published in the October 3, 1995, Federal Register (60 FR 51737) with a request for comments to be submitted by November 2, 1995. The Department received five written comments concerning the proposed rules and regulations from individual sheep producers and feeders, and producer and importer organizations. All comments were filed on time. The commenters generally supported the proposed rule with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of further changes made by the Department. Also, the Department has made other minor changes of a non-substantive nature for purposes of clarity and accuracy. For the reader's convenience, the discussion is organized by topic heading of the proposed rule.

§ 1280.312 Assessments on imported sheep and sheep products.

One commenter suggested that the term ''raw wool'' is too generalized and questioned why imported raw wool is exempt from assessment. The Act defines ''raw wool'' as greasy wool, pulled wool, degreased wool, or carbonized wool. Thus, the definition of raw wool in this final rule is consistent with the definition in the Act. Additionally, the Act specifically exempts imported raw wood from assessment.

One commenter questioned the proposed rule's exemption from assessment of over 300 HTS classification numbers that account for less than 1 percent of total imports. The commenter believes that all imports should be assessed and that the low volume of imports and the high cost of administering the collecting program are not sufficient reasons to exempt HTS classification numbers from assessment. This final rule identifies 341 HTS classification numbers for sheep and sheep products subject to assessments collected by Customs. The Act provides that the Secretary may issue regulations

that exclude certain *de minimis* content levels of sheep and sheep products and waive assessments. Consistent with this provision, the Department has determined that the annual volume of sheep and sheep products represented by each of the 360 HTS classification numbers that are not subject to assessment are likely to be insufficient to fully cover the collection, compliance, and administrative costs associated with these HTS classification numbers. However, the Department plans to review periodically the volume of sheep and sheep products imported under all HTS classification numbers, including those not subject to assessment, to determine which HTS classification numbers should be subject to assessment as identified in Table I in § 1280.312. Accordingly, we have not adopted this suggestion.

Two commenters suggested that § 1280.312(d) of this section be deleted because the language in the Act does not authorize an exemption from assessments for imported sheep or sheep products that are not subject to an import duty. Furthermore, the commenters believe that the Act does not provide for reimbursement of assessments collected on imports that are not subject to an import duty. Additionally, the commenters feel that Customs is directed by the Congress to collect the assessment whether or not there is an import duty. The intent of the language proposed by the Department in § 1280.312(d) was to provide for reimbursement of assessments on imported sheep and sheep products because of collection errors and in cases where assessments were collected on imported sheep and sheep products that were denied entry or were determined to be a pass-through because the imported products did not enter the stream of commerce of the United States. Upon further review of this matter, including the comments received and review of similar research and promotion programs, the Department now believes that reimbursement in such cases should be determined by the Board on a case-by-case basis. Accordingly, the Department has deleted that portion of § 1280.312(d) in this final rule, which provided for reimbursement of a assessments for duty-free products.

During the comment period on the proposed Order (60 FR 28747), some commenters expressed concern about the collection of multiple assessments on wool or wool products imported into the United States that had been previously exported to other countries for further processing (i.e., weaving, cutting and/or assembly). The commenters suggested that a drawback or refund of the assessment should be authorized if multiple assessments are collected. The Department noted in the proposed Order that it would address these concerns in this action. As previously explained, the Act requires that Customs collect an assessment on all imported sheep and sheep products. The only provisions in the Act for the exclusion of imported sheep and sheep products from assessments are (1) the provision for waiving assessments on imported sheep and sheep products that contain *de minimis* amounts of sheep and sheep products, and (2) the provision exempting imported raw wool. Accordingly, this suggestion is not adopted.

One commenter identified nine sets of HTS classification numbers and corresponding conversion factors that should be reviewed by the agency for accuracy and correction:

1. The conversion factor corresponding to HTS classification number 5703100000 was incorrect and should read 0.7933. We agree and we have determined that conversion factor 0.7993 should read 0.7933. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

2. The HTS classification number 5810991000 was incorrect and should read 5810990010. We reviewed the ERS import library and USITC 1995 HTS publication and determined that the HTS classification number 5810991000 was correct as published in the proposed rule. Accordingly, we have not adopted this suggestion.

3. The HTS classification number 6104591000 was incorrect and should read 6104591005. We agree and we have determined that HTS classification number 6104591000 should read 6104591005. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

4. The conversion factor corresponding to HTS classification number 6110909028 was incorrect and should read 0.6433. We agree and we have determined that conversion factor 0.5790 should read 0.6433. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

5. The HTS classification number 6115199020 was incorrect and should read 6115190020. We reviewed the ERS import library and USITC 1995 HTS publication and determined HTS classification number 6115199020 was correct as published in the proposed rule. Accordingly, we have not adopted this suggestion.

6. The conversion factor corresponding to HTS classification number 6203331050 was incorrect and should read 0.5672. We agree and we have determined that conversion factor 0.4767 should read 0.5672. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

7. The conversion factor corresponding to HTS classification number 6203410510 was incorrect and should read 1.0083. We agree and we have determined that conversion factor 0.9859 should read 1.0083. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

8. The conversion factor corresponding to HTS classification number 6203410520 was incorrect and should read 1.0083. We agree and we have determined that conversion factor 0.9859 should read 1.0083. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

9. The conversion factor corresponding to HTS classification number 6204693020 was incorrect and should read 0.5425. We agree and we have determined that conversion factor 0.6029 should read 0.5425. Accordingly, we have adopted this change and it is reflected in Table I under § 1280.312.

In addition, the Department found a typographical error in the dollar-per-pound assessment rate for HTS classification number 0204434000 under the heading Sheep Meat. The correct assessment rate should read 0.030279 dollars per pound, not 30.030279 dollars per pound. Accordingly, we have amended Table I under § 1280.312.

One commenter suggested that the layout of the chart is confusing and could lead to misinterpretation by those responsible for collection of the imported wool assessment. The commenter contends that the inclusion of ''converted'' ''assessment rates'' or ''amounts'' on the net weight of each HTS classification number implies that there is a rate of assessment other than the flat 2 cents per pound of clean weight. Additionally, the commenter suggests that the ''converted'' assessments be either deleted entirely from the chart or changed so as to clarify that the corresponding assessment amounts are based on net weight and are not intended as substitutes for the 2 cents per pound assessment on clean weight equivalent (degreased wool). The Act provides that importers importing sheep and wool products into the United States pay an assessment in the manner prescribed by the Order and that such assessment shall be collected by Customs. The information in Table I is based on 1 cent per pound for sheep meat and 2 cents per pound for wool and wool products. The explanation of the method of

calculation for the per-pound or per-kilogram assessment amounts are described in the Supplementary Information section, which explains that the assessment rates listed in Table I for each HTS classification number for sheep meat are based on the equivalent of 1 cent per pound of live sheep and 2 cents per pound of degreased wool, or the equivalent of degreased wool for wool and wool products. Additionally, the assessment amounts listed for each HTS classification number subject to assessment will assist customs in developing its data processing program that automatically collects and records the total assessment due on imported sheep products subject to assessment. Customs has had over 10 years of experience collecting such assessments for a variety of similar commodity promotion and research programs, and is prepared to use the information contained in Table I of this final rule. Accordingly, no change is made to Table I.

One commenter suggested that the first fourteen wool and wool products HTS classification numbers and corresponding conversion factors be reviewed for accuracy. Each HTS classification number and corresponding conversion factor corresponds with a stage of processing prior to weaving. The commenter believes that the conversion factors do not accurately reflect the losses that occur at each stage of processing. Further, the commenter believes that (1) stage one, carding, has a loss of about 2 percent, (2) stage two, top production, has a loss of about 6 percent, and (3) stage three, spinning wool into yarn, has a loss of about 8 percent. Additionally, the commenter believes that the conversion factors indicate that yarn spinning losses at stage three are less than top-making losses at stage two. The same commenter also suggested that the conversion factors be reduced by 4.3 percent because the conversion factors that appear in these proposed rules and regulations (60 FR 51737) are 4.3 percent higher than those published in conjunction with the proposed referendum rule (60 FR 40313). The commenter recognizes that some of the conversion factors may have needed adjustments. However, the commenter believes that a 4.3 percent adjustment for all wool and wool products cannot be justified. Furthermore, the commenter states that there has not been an increase in the amount of wool needed to produce wool products, and even if there had been it would not be exactly 4.3 percent.

The conversion factors listed in Table I are based on information provided to ERS by the largest wool top makers in the United States. ERS used that data to make adjustments to the 1994 conversion factors for HTS numbers listed in Table I. ERS has again reviewed the 14 HTS classification numbers and corresponding conversion factors that the commenter questioned. The Department has concluded that because these 14 conversion factors reflect data obtained from the largest wool top makers in the United States, no changes will be made to them at this time. In response to the commenter's question concerning the 4.3 percent increase from the conversion factors published in the proposed referendum rules (60 FR 40313) to the conversion factors published in the proposed rules and regulations (60 FR 51737), the conversion factors in the proposed referendum rules were based on data obtained by ERS as of 1994. The representative period to determine voter eligibility and volume of production was 1994.

§ 1280.314 Remittance persons for the purposes of remitting assessments.

One commenter believes that the language in § 1280.314(b), which says that ''each person processing sheep of that persons own production will also pay an assessment,'' means that each ''person'' will be a ''remittance person.'' The commenter also questions the language on page 51737 of the proposed rule that says ''there are an estimated 87,350 sheep operations and an estimated 700 remittance persons who would be subject to the rules and regulations issued pursuant to the Order.

The Act provides that any person who processes or causes to be processed sheep or sheep products of that person's own production and who markets such products must pay an assessment on the sheep and sheep products at the time of sale at a rate equivalent to the rate provided for in the Act, and must remit such assessment to the Board in a manner prescribed by the Order. Although the number of producers and remitting persons is estimated based on data available to the Department, the Department estimates that the number of producers who process and market their own products is relatively small. Several similar commodity research and promotion programs have similar provisions for persons who process and market products of their own production and, based on the Department's experience with these other programs, such persons represent only a small percentage of the total number of remitting persons. Therefore, the Department has determined that of an estimated 87,350 domestic producers and feeders, very few will be remitting persons.

One commenter suggested that we clarify that packers and exporters of lambs and/or sheep would be the only entities that would ever be required to remit the assessment to the Board on sheep and lambs sold. The Act provides that each processor who makes payment to a producer, feeder, handler, or collecting person of domestic sheep and greasy wool would collect the assessment and remit the assessment to the Board. The Act also provides that each person who processes sheep or sheep products of that person's own production and markets such processed products would be required to remit an assessment to the Board. Finally, the Act requires each person who exports live sheep or greasy wool to remit the assessment at the time of export. Accordingly, persons other than packers and exporters are remitting persons as defined by the Act. Therefore, we have not adopted this suggestion.

§ 1280.315 Remittance of assessments and submission of reports to the National Sheep Promotion, Research, and Information Board.

Two commenters suggested that the Department clarify this section so that only those persons who are responsible for remitting the assessments to the Board are also responsible for filing reports on a monthly basis. The commenters further suggest that we clarify that the collecting person is responsible for collecting the assessment to another collecting person or remitting it and either paying it to the Board. Finally, the commenter believes that producers who have paid the assessment and have evidence of payment pursuant to § 1260.316 would not be subject to further assessments even if the assessment were not finally remitted to the Board.

The Department has reviewed the Act's definitions of collecting and remitting person and the language in sections 1280.315 and 1280.316 of the proposal, and has concluded that the definitions of collecting person and remitting person are consistent with the Act and correctly identify those persons in this paragraph. However, § 1280.315(a) Reports has been changed to clarify that each person remitting the assessment is to file a report of assessments to the Board. Additionally, the Department believes that producers or feeders who present evidence of payment described in § 1280.316 should be considered as having paid any assessment required absent evidence to the contrary.

Additional Comments

One commenter believes that the assessment rate as identified under the Background section of the proposed rule is too high. The Act establishes the initial assessment rate and provides the requirements for changing the assessment rate. Thus, we have made no change in this final rule as a result of this comment.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR Part 1280 is amended as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. In Part 1280, Subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec.

Subpart B—Rules and Regulations

Definitions

§ 1280.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

Assessments

§ 1280.310 Assessments on domestic sheep and sheep products.

(a) Domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool will be assessed 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold.

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold.

(c) If more than one producer, feeder, handler, or exporter shares the proceeds received for the sheep or sheep products sold, each such producer, feeder, handler, or exporter is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, handler's, or exporter's proportionate share of the proceeds.

(d) Failure of the purchaser or collecting person to collect the assessment and pass along the assessment to the next purchaser, if necessary, and finally to the processor, as required in § 1280.313, shall not relieve the producer, feeder, or the collecting person of his or her obligation to pay the assessment to the feeder, collecting person, or processor and to remit the assessment to Board.

§ 1280.311 Late payment charges.

(a) Assessments shall be remitted to the address designated by the Board by the 15th day of the month following the month in which domestic sheep or wool was purchased for processing.

(b) Any unpaid assessments due to the Board from any person responsible for remitting the assessment shall be increased by 2 percent the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid assessments and late payment charges previously owed pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment calculated after the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is determined by the postmark date on the envelope or the date of receipt by the Board, whichever is earlier. If the 15th day falls on a Sunday or a holiday, then the assessment will be due the following day.

§ 1280.312 Assessments on imported sheep and sheep products.

(a) Importers will be assessed 1 cent per pound on live sheep imported, the equivalent of 1 cent per pound of live sheep for imported sheep products, and 2 cents per pound of imported degreased wool or the equivalent of imported degreased wool for wool and wool products. Imported raw wool will be exempt from assessments.

(b) Table I, Imported Sheep and Sheep Products Assessment Table, contains the applicable HTS classification numbers of sheep, sheep meat, wool, and wool products, conversion factors and assessment rates, which is identified based on the net weight of the individual sheep product, in dollars per pound and dollars per kilograms for imported sheep, sheep products, wool, and wool products subject to the assessment. Because raw wool is exempt from the assessment collection provisions, HTS classification numbers for imported raw wool are not included in the table.

(c) In the event that any HTS classification number is changed, replaced by another number and has no impact on the physical properties or description of sheep meat, or wool and wool products, assessments will continue to be collected based on the original HTS classification number.

(d) Assessments will be collected by Customs on all imported sheep and sheep products identified by the HTS classification numbers listed in Table I upon importation.

TABLE I.—IMPORTED SHEEP AND SHEEP PRODUCTS ASSESSMENT TABLE

[Live sheep assessment]

HTS	$/lb	$/kg
0104100000	0.010000	0.022046

[Sheep meat assessment]

HTS	CF	$/lb	$/kg
0204100000	1.00	0.019920	0.043916
0204210000	1.00	0.019920	0.043916
0204222000	1.00	0.019920	0.043916
0204224000	1.00	0.019920	0.043916
0204232000	1.52	0.030279	0.066753
0204234000	1.52	0.030279	0.066753
0204300000	1.00	0.019920	0.043916
0204410000	1.00	0.019920	0.043916
0204422000	1.00	0.019920	0.043916
0204424000	1.00	0.019920	0.043916
0204432000	1.52	0.030279	0.066753
0204434000	1.52	0.030279	0.066753

[Wool and Products containing Wool Fibers]

HTS	CF	Assessment	
		$/lb	$/kg
5007106030	0.5546	0.011092	0.024454
5007906030	0.5546	0.011092	0.024454
5103100000	1.0870	0.021740	0.047929
5103200000	1.0870	0.021740	0.047929
5104000000	1.0000	0.020000	0.044092
5105100000	1.0309	0.020618	0.045454
5105210000	1.1111	0.022220	0.048991
5105290000	1.1111	0.022220	0.048991
5106100010	1.0870	0.021740	0.047929
5106100090	1.0870	0.021740	0.047929
5106200000	0.5435	0.010869	0.023962
5107100000	1.0870	0.021740	0.047929
5107200000	0.5435	0.010869	0.023962
5109102000	1.0870	0.021740	0.047929
5111113000	1.1091	0.022183	0.048904
5111117030	1.1091	0.022183	0.048904
5111117060	1.1091	0.022183	0.048904
5111191000	1.1091	0.022183	0.048904
5111192000	1.1091	0.022183	0.048904
5111196020	0.5546	0.011092	0.024454
5111196040	0.5546	0.011092	0.024454
5111196060	1.1091	0.022183	0.048904
5111196080	1.1091	0.022183	0.048904
5111200500	0.5546	0.011092	0.024454
5111209000	0.5546	0.011092	0.024454
5111300500	0.5546	0.011092	0.024454
5111309000	0.5546	0.011092	0.022454
5111903000	0.5546	0.011092	0.024454
5111909000	0.8319	0.016638	0.036679
5112111000	0.9982	0.019964	0.044013
5112112030	1.1091	0.022183	0.048904
5112112060	0.9982	0.019964	0.044013
5112192000	1.1091	0.022183	0.048904
5112199010	1.1091	0.022183	0.048904
5112199020	1.1091	0.022183	0.048904
5112199030	1.1091	0.022183	0.048904
5112199040	1.1091	0.022183	0.048904
5112199050	1.1091	0.022183	0.048904
5112199060	1.1091	0.022183	0.048904
5112201000	0.5546	0.011092	0.024454
5112203000	0.5546	0.011092	0.024454
5112301000	0.5546	0.011092	0.024454
5112303000	0.5546	0.011092	0.024454
5112903000	0.6655	0.013311	0.029345
5112904000	0.8319	0.016638	0.036679
5112909010	0.5546	0.011092	0.024454
5112909090	0.5546	0.011092	0.024454
5212231020	0.4991	0.009982	0.022007
5309292000	0.5546	0.011092	0.024454
5407920520	0.4991	0.009982	0.022007
5407921010	0.2218	0.004437	0.009782
5407921020	0.2218	0.004437	0.009782
5407931000	0.2218	0.004437	0.009782
5408310520	0.4991	0.009982	0.022007
5408321000	0.2218	0.004437	0.009782
5408341000	0.2218	0.004437	0.009782
5509520000	0.3804	0.007608	0.016773
5509610000	0.1630	0.003260	0.007187
5509910000	0.3804	0.007608	0.016773
5510200000	0.3804	0.007608	0.016773
5515130510	0.4991	0.009982	0.022007
5515130520	0.4991	0.009982	0.022007
5515131010	0.2218	0.004437	0.009782
5515131020	0.2218	0.004437	0.009782
5515220510	0.4991	0.009982	0.022007
5515221000	0.2218	0.004437	0.009782
5515920510	0.4991	0.009982	0.022007
5515920520	0.4991	0.009982	0.022007
5515921010	0.2218	0.004437	0.009782
5515921020	0.2218	0.004437	0.009782
5516311000	0.2218	0.004437	0.009782

[Wool and Products containing Wool Fibers]

HTS	CF	Assessment	
		$/lb	$/kg
5516320520	0.4991	0.009982	0.022007
5516321000	0.2218	0.004437	0.009782
5516330510	0.4991	0.009982	0.022007
5516330520	0.4991	0.009982	0.022007
5516331000	0.2218	0.004437	0.009782
5516341000	0.2218	0.004437	0.009782
5601290020	0.9428	0.018856	0.041570
5602109010	1.1091	0.022183	0.048904
5602109090	0.5546	0.011092	0.024454
5602210000	1.1091	0.022183	0.048904
5701101300	0.9783	0.019566	0.043135
5701101600	0.9783	0.019566	0.043135
5701104000	0.9783	0.019566	0.043135
5701109000	0.9783	0.019566	0.043135
5702101000	0.8315	0.016630	0.036662
5702109010	0.8315	0.016630	0.036662
5702311000	0.7853	0.015706	0.034625
5702312000	0.6467	0.012934	0.028514
5702411000	0.7853	0.015706	0.034625
5702412000	0.6929	0.013859	0.030551
5702512000	0.7853	0.015706	0.034625
5702514000	0.7853	0.015706	0.034625
5702913000	0.8315	0.016630	0.036662
5702914000	0.7853	0.015706	0.034625
5703100020	0.7933	0.015886	0.035022
5703100080	0.7933	0.015886	0.035022
5704100010	0.7466	0.014932	0.032919
5704900010	0.9332	0.018664	0.041147
5705002005	0.7466	0.014932	0.032919
5801100000	1.1091	0.022183	0.048904
5801902090	1.1091	0.022183	0.048904
5805002000	1.1091	0.022183	0.048904
5805002500	1.1091	0.022183	0.048904
5810991000	1.1091	0.022183	0.048904
5903903010	0.5546	0.011092	0.024454
6001290000	1.1322	0.022644	0.049921
6002410000	1.1322	0.022644	0.049921
6002490000	1.1322	0.022644	0.049921
6002910000	1.1322	0.022644	0.049921
6101100000	1.0533	0.021066	0.046442
6102100000	1.0533	0.021066	0.046442
6102301000	0.5266	0.010532	0.023219
6103110000	0.8806	0.017612	0.038828
6103122000	0.1887	0.003773	0.008319
6103310000	1.0293	0.020586	0.045384
6103411010	0.8615	0.017230	0.037986
6103412000	0.8615	0.017230	0.037986
6103431020	0.4923	0.009846	0.021708
6104110000	0.9007	0.018014	0.039714
6104310000	0.9007	0.018014	0.039714
6104331000	0.5147	0.010293	0.022692
6104332000	0.1287	0.002573	0.005673
6104391000	0.1287	0.002573	0.005673
6104410010	1.0064	0.020128	0.044374
6104431010	0.5032	0.010064	0.022187
6104432010	0.1258	0.002517	0.005549
6104432020	0.1258	0.002517	0.005549
6104441000	0.5032	0.010064	0.022187
6104442010	0.1258	0.002517	0.005549
6104442020	0.1258	0.002517	0.005549
6104510000	1.0411	0.020822	0.045904
6104531000	0.5206	0.010412	0.022954
6104532010	0.1301	0.002602	0.005737
6104532020	0.1301	0.002602	0.005737
6104591005	0.5206	0.010412	0.022954
6104591030	0.1301	0.002602	0.005737
6104610010	0.8256	0.016512	0.036402
6104631510	0.4718	0.009436	0.020803
6105201000	0.4617	0.009234	0.020357
6105901000	0.8080	0.016160	0.035626
6105908020	0.5420	0.010840	0.023898

[Wool and Products containing Wool Fibers]

HTS	CF	Assessment	
		$/lb	$/kg
6106201010	0.4818	0.009636	0.021243
6106201020	0.4818	0.009636	0.021243
6106901010	0.8432	0.016864	0.037178
6107992000	0.8256	0.016512	0.036402
6108992000	0.8167	0.016334	0.036010
6109901530	0.8432	0.016864	0.037178
6110101010	1.2866	0.025733	0.056730
6110101020	1.2866	0.025733	0.056730
6110101030	1.2866	0.025733	0.056730
6110101040	1.2866	0.025733	0.056730
6110101050	1.2866	0.025733	0.056730
6110101060	1.2866	0.025733	0.056730
6110102010	0.9007	0.018014	0.039714
6110102020	0.9007	0.018014	0.039714
6110102030	0.9007	0.018014	0.039714
6110102040	0.9007	0.018014	0.039714
6110102050	0.9007	0.018014	0.039714
6110102060	0.9007	0.018014	0.039714
6110102070	0.9007	0.018014	0.039714
6110102080	0.9007	0.018014	0.039714
6110301510	0.5147	0.010293	0.022692
6110301520	0.5147	0.010293	0.022692
6110301530	0.5147	0.010293	0.022692
6110301540	0.5147	0.010293	0.022692
6110301550	0.5147	0.010293	0.022692
6110301560	0.5147	0.010293	0.022692
6110303010	0.1930	0.003861	0.008512
6110303015	0.1930	0.003861	0.008512
6110303020	0.1930	0.003861	0.008512
6110303025	0.1930	0.003861	0.008512
6110303030	0.1930	0.003861	0.008512
6110303035	0.1930	0.003861	0.008512
6110303040	0.1930	0.003861	0.008512
6110303045	0.1930	0.003861	0.008512
6110303050	0.1930	0.003861	0.008512
6110303055	0.1930	0.003861	0.008512
6110909012	0.5790	0.011581	0.025531
6110909028	0.6433	0.012866	0.028364
6110909074	0.5790	0.011581	0.025531
6111100010	1.1076	0.022152	0.048836
6111100030	1.1076	0.022152	0.048836
6114100040	0.8806	0.017612	0.038828
6114100050	0.8806	0.017612	0.038828
6114100070	0.8806	0.017612	0.038828
6115198020	1.1322	0.022644	0.049921
6115910000	0.9058	0.018116	0.039939
6115939010	0.4529	0.009058	0.019968
6116109500	0.0834	0.001668	0.003677
6116910000	0.9535	0.019070	0.042042
6116936400	0.4767	0.009534	0.021019
6116937400	0.4767	0.009534	0.021019
6116938800	0.1788	0.003575	0.007882
6116939400	0.1788	0.003575	0.007882
6116999530	0.3576	0.007152	0.015768
6117101000	1.0727	0.021454	0.047298
6117102010	0.4767	0.009534	0.021019
6117809020	0.9635	0.019270	0.042483
6117809030	0.5959	0.011919	0.026276
6201110010	1.0199	0.020398	0.044970
6201110020	1.0199	0.020398	0.044970
6201122010	0.0637	0.001274	0.002809
6201133010	0.4590	0.009180	0.020238
6201134015	0.0510	0.001021	0.002250
6201134030	0.1020	0.002039	0.004495
6201134040	0.1020	0.002039	0.004495
6201199020	0.6374	0.012748	0.028104
6201911000	0.9970	0.019939	0.043958
6201912011	0.9970	0.019939	0.043958
6201912021	0.9970	0.019939	0.043958
6201932511	0.4985	0.009970	0.021980
6202110010	0.8823	0.017646	0.038901

[Wool and Products containing Wool Fibers]

HTS	CF	Assessment	
		$/lb	$/kg
6202110020	0.8823	0.017646	0.038901
6202122010	0.0630	0.001261	0.002779
6202133010	0.5804	0.011608	0.025591
6202134005	0.0645	0.001290	0.002843
6202134030	0.1290	0.002584	0.005697
6202911000	1.0083	0.020167	0.044459
6202912011	1.0083	0.020167	0.044459
6202912021	1.0083	0.020167	0.044459
6202934011	0.5672	0.011344	0.025009
6203111000	0.6302	0.012603	0.027785
6203112000	0.6302	0.012603	0.027785
6203121000	0.5672	0.011344	0.025009
6203310010	1.0713	0.021426	0.047236
6203310020	1.0713	0.021426	0.047236
6203331030	0.5672	0.011344	0.025009
6203331050	0.5672	0.011344	0.025009
6203399020	0.6302	0.012604	0.027787
6203410510	1.0083	0.020166	0.044458
6203410520	1.0083	0.020166	0.044458
6203433010	0.5425	0.010850	0.023921
6203433020	0.5425	0.010850	0.023921
6204110000	0.9453	0.018906	0.041680
6204131000	0.5672	0.011344	0.025009
6204132010	0.1891	0.003782	0.008337
6204191000	0.5672	0.011344	0.025009
6204192000	0.1891	0.003782	0.008337
6204210010	0.8823	0.017646	0.038901
6204210030	0.8823	0.017646	0.038901
6204312010	1.0713	0.021426	0.047236
6204312020	1.0713	0.021426	0.047236
6204334010	0.5042	0.010084	0.022231
6204335010	0.0630	0.001261	0.002779
6204335020	0.0630	0.001261	0.002779
6204392010	0.5042	0.010084	0.022231
6204393010	0.0630	0.001261	0.002779
6204398020	0.5672	0.011344	0.025009
6204412010	1.0475	0.020950	0.046186
6204412020	1.0475	0.020950	0.046186
6204433010	0.4930	0.009860	0.021737
6204434010	0.4930	0.009860	0.021737
6204434020	0.4930	0.009860	0.021737
6204434030	0.3081	0.006163	0.013587
6204434040	0.3081	0.006163	0.013587
6204443010	0.5042	0.010084	0.022231
6204444010	0.5042	0.010084	0.022231
6204444020	0.5042	0.010084	0.022231
6204510010	1.0318	0.020636	0.045495
6204510020	1.0318	0.020636	0.045495
6204532010	0.5159	0.010318	0.022747
6204592010	0.5159	0.010318	0.022747
6204593010	0.5159	0.010318	0.022747
6204593020	0.5159	0.010318	0.022747
6204594020	0.5804	0.011608	0.025591
6204611010	0.9645	0.019290	0.042527
6204611020	0.9645	0.019290	0.042527
6204619010	0.9645	0.019290	0.042527
6204619020	0.9645	0.019290	0.042527
6204619040	0.9645	0.019290	0.042527
6204632510	0.4822	0.009644	0.021261
6204692010	0.4822	0.009644	0.021261
6204692030	0.4822	0.009644	0.021261
6204696020	0.5425	0.010850	0.023921
6204699020	0.5426	0.010850	0.023921
6204699030	0.1808	0.003617	0.007974
6204699050	0.1808	0.003617	0.007974
6205102010	0.9645	0.019290	0.042527
6205102020	0.9645	0.019290	0.042527
6205301510	0.4822	0.009644	0.021261
6205903050	0.0603	0.001206	0.002659
6205904040	0.1206	0.002412	0.005317
6206203010	0.9645	0.019290	0.042527

[Wool and Products containing Wool Fibers]

HTS	CF	Assessment	
		$/lb	$/kg
6206203020	0.9645	0.019290	0.042527
6206402510	0.5425	0.010850	0.023921
6207992000	0.8627	0.017253	0.038036
6208920010	0.0616	0.001232	0.002716
6208920030	0.0616	0.001232	0.002716
6209100000	0.8260	0.016520	0.036420
6211310030	0.9453	0.018906	0.041680
6211310040	0.9453	0.018906	0.041680
6211310051	0.9453	0.018906	0.041680
6211330052	0.6302	0.012603	0.027785
6211410040	0.9453	0.018906	0.041680
6211410050	1.0083	0.020167	0.044459
6211410055	1.0083	0.020167	0.044459
6211410061	1.0083	0.020167	0.044459
6211430064	0.6302	0.012603	0.027785
6211430074	0.6302	0.012603	0.027785
6212900020	0.7472	0.014944	0.032946
6214102000	0.3503	0.007006	0.015446
6214200000	0.9340	0.018681	0.041184
6214300000	0.1168	0.002335	0.005149
6214400000	0.1168	0.002335	0.005149
6214900010	0.0584	0.001168	0.002575
6215900010	1.1675	0.023350	0.051478
6216008000	1.2056	0.024112	0.053157
6217109020	0.8627	0.017253	0.038036
6217109030	0.1232	0.002465	0.005434
6217909010	0.1232	0.002465	0.005434
6217909030	0.8627	0.017253	0.038036
6217909035	0.1232	0.002465	0.005434
6217909085	0.1232	0.002465	0.005434
6301200010	0.9620	0.019240	0.042417
6301200020	0.9620	0.019240	0.042417
6301900030	0.1132	0.002264	0.004992
6302390010	0.9620	0.019240	0.042417
6304193040	0.9054	0.018109	0.039923
6304910050	0.7922	0.015845	0.034931
6304991000	1.1318	0.022636	0.049902
6304991500	1.1318	0.022636	0.049902
6304996010	1.1318	0.022636	0.049902
6501009000	1.3864	0.027728	0.061129
6503009000	1.3864	0.027728	0.061129
6505903090	0.8838	0.017677	0.038970
6505904090	0.8658	0.017316	0.038174
6505906040	0.4621	0.009242	0.020375

§ 1280.313 Collecting persons for purposes of collection of assessments.

(a) Any person who is responsible for collecting an assessment pursuant to the Act and this subpart, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, shall be a collecting person, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder, shall pass the collected assessment on to the subsequent purchaser pursuant to the Order.

(b) Customs will collect the assessment at the time of importation from the importer or from any person acting as the principal agent, broker, or consignee for sheep, sheep products, wool, and products containing wool fiber identified by the HTS classification numbers in § 1280.312.

(c) In cases where a producer or feeder sells sheep as part of a custom slaughter operation, the producer or feeder shall be the collecting person in the same manner as if the sheep were sold for slaughter.

(d) For the purposes of this section, in the event of a producer's, feeder's, or importer's death, bankruptcy, receivership, or incapacity, the representative of such producer, feeder, or importer or the producer's, feeder's, or importer's estate, or the person acting on behalf of creditors, shall be considered the producer, feeder, or importer.

§ 1280.314 Remittance persons for purposes of remitting assessments.

(a) Each processor who makes payment to a producer, feeder, handler, or collecting person for sheep or wool purchased from the producer, feeder, handler, or collecting person shall be a remitting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on sheep or wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor and that processor shall remit the assessment to the Board;

(b) Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or

sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established pursuant to § 1280.224(d), Sheep Purchases, of the Order, for live sheep or § 1280.225(d), Wool Purchases, for greasy wool, and shall remit such assessment to the Board;

(c) Each person who exports live sheep or greasy wool shall remit the assessment to the Board on such sheep or greasy wool at the time of export, at the rate established pursuant to § 1280.224(d), Sheep Purchases, of the Order, for live sheep or § 1280.225(d), Wool Purchases, for greasy wool.

§ 1280.315 Remittance of assessments and submission of reports to the National Sheep Promotion, Research, and Information Board.

Each person responsible for remitting the assessment as described in § 1280.314 shall remit the assessments and a report of assessments to the Board as follows:

(a) Reports. Each person who is responsible for remitting the assessment shall make reports on forms made available or approved by the Board. Such person shall prepare a separate report for each reporting period. Each report shall be mailed together with the applicable assessment amount to the Board pursuant to § 1280.311(a). Each completed report shall contain the following information, as applicable, including, but not limited to:

(1) Live sheep sold.

(i) The number of sheep purchased, initially transferred, or subject to the collection of assessment in any other manner, and the dates of such transactions;

(ii) The number of live sheep exported;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(v) The date an assessment was paid.

(2) Greasy wool sold.

(i) The amount of wool that is purchased, initially transferred or subject to the collection of assessment in any other manner, and the dates of such transaction;

(ii) The amount of greasy wool exported;

(iii) The amount of assessment remitted;

(iv) An explanation for the remittance of an assessment that is less than the pounds of greasy wool multiplied by the assessment rate; and

(v) The date an assessment was paid.

(b) Customs will transmit reports and assessments collected on imported sheep and sheep products to AMS according to an agreement between Customs and AMS.

§ 1280.316 Evidence of payment of assessments.

Each collecting person, except a producer or feeder who processes sheep or sheep products of the producer's or feeder's own production for sale, is required to give to the producer, feeder, handler, or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments. Such written evidence, which shall serve as a receipt, must contain the following information:

(a) Name and address of the collecting person;

(b) Name of producer or feeder who paid the assessment;

(c) Number of head of sheep sold;

(d) Total pounds of sheep or greasy wool sold;

(e) Total assessments paid by the producer or feeder; and

(f) Date an assessment was paid.

§ 1280.317 Books and records.

Any person subject to the requirements in § 1280.233, Books and Records, of the Order shall maintain and make available to the Secretary for at least 2 years beyond the fiscal period of their applicability such books and records as necessary to carry out the provision of the Order and these regulations.

§ 1280.318 OMB control numbers.

The control number assigned to the information collection requirements in Part 1280 by OMB pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35) is OMB number 0581–0093.

Dated: May 3, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–11602 Filed 5–8–96; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

8 CFR Parts 3 and 242

[EOIR 102F]

RIN 1125–AA01

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings; Correction

AGENCY: Department of Justice.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the final regulation, published Monday, April 29, 1996 (61 FR 18900), relating to new motions and appeals procedures in immigration proceedings.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT:

Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections streamlines the motions and appeals practice before the Board of Immigration Appeals and establishes a centralized procedure for filing notices of appeal, fees, fee waiver requests, and briefs directly with the Board. The new regulation also establishes time and number limitations on motions to reconsider and on motions to reopen and makes certain changes to appellate procedures to reflect the statutory directives of section 545 of the Immigration Act of 1990 (Pub. L. 101–649, 104 Stat. at 4978).

Need for Correction

As published, the final regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Editorial Note: An additional correction to this document appears elsewhere in the Corrections Section of this issue.

Accordingly, the publication on April 29, 1996, of the final regulation (EOIR 102F), which was the subject of FR Doc. 96–10157 is corrected as follows:

§ 3.6(b) [Corrected]

1. On page 18907, in the second column, in § 3.6 paragraph (b), line 9, the reference to ''§ 3.23(b)(4)(ii)'' is corrected to read ''§ 3.23(b)(4)(iii).''

§ 242.22 [Corrected]

2. On page 18909, in the third column, in § 242.22, line 6, the reference to ''§ 3.23(b)(4)(ii)'' is corrected to read ''§ 3.23(b)(4)(iii).''

Dated: May 6, 1996.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 96–11614 Filed 5–8–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–77–AD; Amendment 39–9612; AD 96–10–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires inspections to detect damage of the support brackets and clamps of the transfer pipe of the tail tank, and of the transfer pipe assembly; and replacement of damaged parts, or installation of a doubler, if necessary. This amendment is prompted by reports of cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly; such damage is due to flexing of the brackets and subsequent contact of the transfer pipe assembly with adjacent structure. The actions specified in this AD are intended to prevent such cracking and damage, which could result in further damage to the transfer pipe assembly and possible fuel leakage.

DATES: Effective May 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Airframe Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank on McDonnell Douglas Model MD–11 series airplanes. In addition, the nylon clamps and transfer pipe assembly have been found to be damaged. Investigation revealed that this cracking and damage was caused by flexing of the brackets during refueling and transfer operations of the tail fuel tank. When this flexing occurs, the transfer pipe assembly can sustain damage due to contact with adjacent structure. Such cracking and damage, if not corrected, would result in further damage to the fuel transfer pipe assembly and possible fuel leakage.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A083, dated March 13, 1996, which describes procedures for repetitive visual inspections to detect cracking, bending, or stress of the support brackets, and any damage to the clamps of the transfer pipe of the tail tank; and replacement of any damaged bracket or clamp with a serviceable part. The alert service bulletin also describes procedures for repetitive visual inspections to detect damage of the transfer pipe assembly of the tail tank; and procedures for installation of a doubler on the pipe assembly, or replacement of the pipe assembly with a serviceable assembly, if necessary.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly, which if not corrected, could result in further damage to the transfer pipe assembly and possible fuel leakage. This AD requires repetitive visual inspections for cracking, bending, or stress of the support brackets, and any damage to the clamps of the transfer pipe of the tail tank; and replacement of any damaged bracket or clamp with a serviceable part. This AD also requires repetitive visual inspections for damage of the transfer pipe assembly of the tail tank; and installation of a doubler on the pipe assembly, or replacement of the pipe assembly with a serviceable assembly, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This AD is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Difference Between this Rule and the Relevant Service Information

Operators should note that the McDonnell Douglas alert service bulletin recommends accomplishment of the initial inspection at ''the earliest practical maintenance period, but not to exceed 600 flight hours from the date of issuance of the alert service bulletin.'' However, the FAA has determined that, since maintenance intervals vary from operator to operator, and since the time of receipt of the alert service bulletin also may vary from operator to operator, the compliance time for this AD must be less subjective in order to ensure that the actions are accomplished by all affected operators in a timely manner. This AD requires compliance within 90 days after the effective date of the rule. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and regularly scheduled maintenance intervals for the affected airplanes. In light of all of these factors, the FAA finds that a 90-day compliance time for accomplishment of the initial inspection is appropriate in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that the effectivity listing in the McDonnell Douglas alert service bulletin includes certain airplanes designated as ''Group 2 airplanes.'' The initial visual inspection (required by this AD) was

accomplished and a temporary doubler was installed on these airplanes during production. For these airplanes, the alert service bulletin suggests an inspection interval of 15 months for accomplishment of the visual inspection. The FAA has determined that this inspection interval for Group 2 airplanes is appropriate, and is considering additional rulemaking action to address the requirements for Group 2 airplanes. However, a 15-month compliance time for the planned requirements is sufficiently long so that notice and time for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–77–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–10–07 McDonnell Douglas: Amendment 39–9612. Docket 96–NM–77–AD.

Applicability: Model MD–11 series airplanes; specified as Group 1 airplanes and listed in McDonnell Douglas Alert Service Bulletin MD–11–28A083, dated March 13, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Airplanes specified as Group 2 airplanes and listed in McDonnell Douglas Alert Service Bulletin MD–11–28A083, dated March 13, 1996, are not subject to this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly, which, if not corrected, could result in further damage to the transfer pipe assembly and possible fuel leakage, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Paragraph 3. of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD–11–28A083, dated March 13, 1996.

(1) Perform a visual inspection for cracking, bending, or stress of the support brackets and damage to the nylon clamps of the transfer pipe of the tail tank, in accordance with the alert service bulletin. If any damaged bracket or clamp is detected, prior to further flight, replace it with a serviceable part in accordance with the alert service bulletin.

(2) Perform a visual inspection for chafing and/or denting of the transfer pipe assembly of the tail tank, in accordance with the alert service bulletin.

(i) *Condition 1.* If no damage to the fuel pipe assembly is detected, accomplish the requirements of either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD at the times specified in that paragraph.

(A) Option 1. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours; or

(B) Option 2. Install a temporary doubler on the fuel pipe assembly in accordance with the alert service bulletin and, thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 15 months.

(ii) *Condition 2.* If damage is found that is within the limits specified by the alert service bulletin, prior to further flight, install a temporary doubler on the fuel pipe assembly. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 15 months.

(iii) *Condition 3.* If damage is found that is outside the limits specified by the alert service bulletin, prior to further flight, replace the fuel pipe assembly with a new or

serviceable assembly; and accomplish the requirements of either paragraph (a)(2)(iii)(A) or (a)(2)(iii)(C) of this AD at the time specified in that paragraph.

(A) Option 1. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours; or

(B) Option 2. Install a temporary doubler on the fuel pipe assembly; and repeat the visual inspections required by paragraph (a) of this AD, thereafter, at intervals not to exceed 15 months. (Replacement of the fuel pipe assembly with a serviceable pipe assembly that has been repaired by welding a doubler in the area of potential damage, does not require the installation of a temporary doubler.)

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD–11–28A083, dated March 13, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 24, 1996.

Issued in Renton, Washington, on May 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11408 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–84–AD; Amendment 39–9611; AD 96–10–06]

RIN: 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This action requires repetitive inspections to detect cracks of the lower gate hinge of the forward galley service door, and replacement of any cracked hinge. This action also provides an optional terminating replacement for the repetitive inspections. This amendment is prompted by reports of fatigue cracks found in the lower gate hinge on the forward galley service door. The actions specified in this AD are intended to prevent such fatigue cracking, which could lead to the failure of the lower gate hinge on the forward galley service door and subsequent loss of cabin pressure. If the hinge fails, the hinge and its associated mechanisms and the emergency escape slide could separate from the airplane and be ingested into the engine, or could strike and damage the flight control surfaces.

DATES: Effective May 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of cracks found in the lower gate hinge on the forward galley service door on Boeing Model 737 series airplanes. In two of these cases, the hinge was severed completely and the lower gate separated from the airplane while in flight, which resulted in loss of cabin pressure. In one of these cases, the emergency escape slide was slowly pulled through the gate opening, and, subsequently, it separated from the airplane. These airplanes had accumulated between 13,700 and 66,000 total flight cycles. Investigation revealed that the cause of such cracking was due to fatigue. The effects of such fatigue cracking could lead to the failure of the lower gate hinge on the forward galley service door and subsequent loss of cabin pressure. If the hinge fails, the hinge and its associated mechanisms and the emergency escape slide could separate from the airplane and be ingested into the engine, or could strike and damage the flight control surfaces.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–52A1124, dated January 11, 1996, which describes procedures for repetitive detailed visual inspections to detect cracks of the lower gate hinge of the forward galley service door, and replacement of any cracked hinge found. The service bulletin also describes procedures for replacement of the lower gate hinge of the forward galley service door with an improved hinge, which will eliminate the need for the repetitive inspections.

Explanation of the Requirements of the AD

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent fatigue cracking and subsequent failure of the lower gate hinge on the forward galley service door. This AD requires repetitive detailed visual inspections to detect cracks of the lower gate hinge of the forward galley service door, and replacement of any cracked hinge found. This AD also provides for an optional replacement of the lower gate hinge of the forward galley service door with an improved hinge, which constitutes terminating action for the repetitive inspection requirements. The actions are required to be accomplished

in accordance with the alert service bulletin described previously.

Differences Between the AD and the Relevant Service Information

Operators should note that, unlike the various recommended compliance times specified in the alert service bulletin for accomplishing the initial inspection of airplanes (specified as 1,200 flight cycles after receipt of the service bulletin for airplanes with 10,000 to 12,000 total flight cycles; 800 flight cycles after receipt for airplanes with 12,000 to 13,000 total flight cycles; and 400 flight cycles after receipt for airplanes with 13,000 or more total flight cycles), this AD requires that all airplanes be inspected within 400 flight cycles after the effective date of the AD. In consideration of not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (3 hours), the FAA has determined that the various intervals specified in that alert service bulletin would not address the identified unsafe condition in a timely manner. In addition, the FAA has reviewed the available data and determined that the length of cracking is not necessarily related to the airplane's flight cycles, but instead is related to the number of door cycles. In light of all of these factors, the FAA finds that a 400-flight cycle compliance time for initiating the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–84–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–10–06 Boeing: Amendment 39–9611. Docket 96–NM–84–AD.

Applicability: Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737–52A1124, dated January 11, 1996; on which the actions specified in Boeing Service Bulletin 737–52–1097, Revision 1, dated April 6, 1989, or Revision 2, dated January 11, 1990, have not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower gate hinge on the forward galley service door, accomplish the following:

(a) Within 400 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks of the lower gate hinge of the forward galley service door, in accordance with Boeing Alert Service Bulletin 737–52A1124, dated January 11, 1996.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles.

(2) If any crack is detected, prior to further flight, replace the lower gate hinge with a new hinge, in accordance with the alert service bulletin. Accomplishment of the replacement constitutes terminating action for this AD.

(b) Replacement of the lower gate hinge of the forward galley service door with an improved hinge, in accordance with Boeing Alert Service Bulletin 737–52A1124, dated January 11, 1996, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Boeing Alert Service Bulletin 737–52A1124, dated January 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 24, 1996.

Issued in Renton, Washington, on May 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11407 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–12; Amendment 39–9609; AD 96–10–04]

Airworthiness Directives; AlliedSignal, Inc. LTS101–600 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal, Inc. LTS101–600 series turboshaft engines, that requires installation of an improved design fuel control. This amendment is prompted by reports of fuel control bearings failing prior to the recommended overhaul period. The actions specified by this AD are intended to prevent a fuel control failure, which could result in an uncommanded increase or decrease in engine power.

DATES: Effective June 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7139, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal, Inc. Models LTS101–600A–2/A–3 turboshaft engines was published in the Federal Register on August 21, 1995 (60 FR 43413). That action proposed to require the installation of an improved fuel control in accordance with AlliedSignal Engines Service Bulletin (SB) No. LTS101A–73–20–0166, Revision 1, dated November 21, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter, the manufacturer, states that since the issuance of the NPRM, AlliedSignal, Inc. has revised AlliedSignal Engines SB No. LTS101A–73–20–0166 to recommend the installation of a screened pneumatic fitting on the main fuel control (MFC). The FAA concurs in part. Both revisions of the SB address the incorporation of fuel control drive (Meldin) bearings in the MFC in the same manner, which is the primary focus of this AD. The FAA has determined that installation of a screened pneumatic fitting is not necessary to prevent a MFC failure due to lack of bearing lubrication. Therefore, this final rule references both AlliedSignal Engines SB No. LTS101A–73–20–0166, Revision 1, dated November 21, 1994, and Revision 2, dated August 1, 1995, but does not require installation of a screened pneumatic fitting.

The manufacturer also states that due to the time required to publish the NPRM and receive comments, the AD will not be published prior to compliance end-date specified in the NPRM. The FAA concurs and has extended the compliance end-date in this final rule to September 1, 1996.

In addition, the FAA is considering future rulemaking to address other aircraft installations of the AlliedSignal, Inc. LT101 series engines.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 216 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $248,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–10–04 AlliedSignal, Inc.: Amendment 39–9609. Docket 95–ANE–12.

Applicability: AlliedSignal, Inc. Models LTS101–600A–2 and A–3 turboshaft engines, installed on but not limited to Eurocopter AS350 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fuel control failure, which could result in an uncommanded increase or decrease in available engine power, accomplish the following:

(a) At the next replacement of an affected fuel control, prior to accumulating 300 hours time in service (TIS) after the effective date of this AD, or September 1, 1996, whichever occurs first, accomplish the following in accordance with AlliedSignal Engines Service Bulletin (SB) No. LTS101A–73–20–0166, Revision 1, dated November 21, 1994, or Revision 2, dated August 1, 1995:

(1) For AlliedSignal, Inc. Model LTS101–600A–2 engines, install an improved fuel control, P/N 4–301–098–04 with ''B'' or ''BF'' stamped on the data plate after the dash number of the AlliedSignal Aerospace Equipment Division (formerly AlliedSignal Controls and Accessories/Bendix) part number, or P/N 4–301–098–15. These improved fuel controls incorporate fuel control drive (Meldin) bearings.

(2) For AlliedSignal, Inc. Model LTS101–600A–3 engines, install an improved fuel control, P/N 4–301–288–02 with ''B'' or ''BF'' stamped on the data plate after the dash number of the AlliedSignal Aerospace Equipment Division (formerly AlliedSignal Controls and Accessories/Bendix) P/N, or P/N 4–301–288–04. These improved fuel controls incorporate fuel control drive (Meldin) bearings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Engines SB's:

Document No.	Pages	Revision	Date
LTS101A–73–20–0166. Total Pages: 3.	1–3	1	November 21, 1994.
LTS101A–73–20–0166. Total Pages: 6.	1–6	2	August 1, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, 111 South 34th Street, Phoenix, AZ 85072; telephone (602) 365–2493, fax (602) 365–2210. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 13, 1996.

Issued in Burlington, Massachusetts, on April 24, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11258 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–03; Amendment 39–9583; AD 69–09–03 R3]

Airworthiness Directives; Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M76EMMS, 76EM8, and 76EM8S() Metal Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M76EMMS, 76EM8, and 76EM8S() metal propellers, that currently restricts operators from continuously operating the propeller at engine speeds from 2,150 to 2,350 revolutions per minute (RPM) and specifies propeller inspection and rework or replacement. This amendment eliminates the requirement to add tachometer markings on aircraft with certain additional Textron Lycoming O–360 series reciprocating engines with solid crankshafts installed, and updates the referenced Sensenich Propeller Company Inc. service bulletin to the latest revision. Reworking of all affected propeller models remains a requirement of the AD, regardless of engine installation. This amendment is prompted by inquiries concerning tachometer red arc restrictions on certain Textron Lycoming O–360 series reciprocating engines with solid crankshafts. The actions specified by this AD are intended to prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft.

DATES: Effective June 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Sensenich Propeller Manufacturing Company Inc., 519 Airport Road, Lititz, PA 17543; telephone (717) 569–0435, fax (717) 560–3725. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Aerospace

Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Valley Stream, NY 11581; telephone (516) 256–7505, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 69–09–03, Amendment 39–761 (34 FR 7371, May 7, 1969); Revision 1, Amendment 39–808 (34 FR 12563, August 1, 1969); Revision 2, Amendment 39–1102 (35 FR 17030, November 5, 1970), was published in the Federal Register on December 7, 1995 (60 FR 62772). The action, applicable to Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M76EMMS, 76EM8, and 76EM8S() metal propellers, proposed to eliminate the requirement to add tachometer markings on aircraft with certain additional Textron Lycoming O–360 series reciprocating engines with solid crankshafts installed that restrict continuous operation between engine speeds from 2,150 to 2,350 revolutions per minute (RPM). In addition, that action proposed to update the referenced Sensenich Propeller Company Inc. service bulletin (SB) to the latest revision.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

In the NPRM, propeller model M76EMMS was erroneously listed as M7EMMS. This final rule lists the correct propeller model, M76EMMS.

In addition, since issuance of the NPRM, the manufacturer has advised the FAA that correct date of SB No. R–14A is July 28, 1995. This final rule shows the correct revision date.

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100 propellers of the affected design that may not have been modified to the ''K'' standard in the worldwide fleet. The FAA estimates that 50 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per propeller to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,500. However, since this rule further restricts the applicability by exempting propellers installed on certain Textron Lycoming engine models from the tachometer restriction, there is a potential overall cost savings of $4,395,000, if all the affected Sensenich propellers are installed on the newly exempted engines.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1102 (35 FR 17030, November 5, 1970) and by adding a new airworthiness directive, Amendment 39–9583, to read as follows:

69–09–03 R3 Sensenich Propeller Manufacturing Company Inc.: Amendment 39–9583. Docket 95–ANE–03. Revises AD 69–09–03 R2, Amendment 39–1102.

Applicability: Sensenich Propeller Manufacturing Company Inc. Models M76EMM, M76EMMS, 76EM8, and 76EM8S() metal propellers. Paragraphs (a) and (b) of this airworthiness directive (AD) do not apply to those propellers installed on the following solid crankshaft Textron Lycoming O–360 series reciprocating engines: O–360–A4A, –A4D, –A4G, –A4J, –A4K, –A4M, –A4N, –A4P, and –A5AD, or additional engines identified by suffixes having a digit ''4'' or higher in the second position. These propellers are installed on but not limited to the following aircraft: Piper PA–28–180, PA–28–181, American General Aircraft Holding Co. Inc. (formerly Gulfstream American) AA–5 series, Beech B23 and C23, Cessna 172Q, Avions Pierre Robin R–3000/160, and aircraft modified under various Supplemental Type Certificates (STC's).

Note: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD.In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent propeller blade tip fatigue failure, which can result in loss of control of the aircraft, accomplish the following:

(a) Commencing with the next flight after the effective date of this AD, do not operate the engine in continuous operation between 2,150 and 2,350 RPM.

(b) Within the next 25 hours time in service (TIS) after the effective date of this AD, mark engine tachometer with a red arc from 2150 RPM to 2350 RPM.

(c) For propellers with 500 or more total hours TIS, or unknown TIS on the effective date of this AD, inspect and rework, within the next 50 hours TIS after the effective date of this AD, in accordance with Sensenich Propeller SB No. R–14A, dated July 28, 1995. Remove from service those propellers that do not meet the inspection and rework requirements of Sensenich Propeller SB No. R–14A, dated July 28, 1995.

(d) For propellers with less than 500 total hours TIS on the effective date of this AD,

inspect, and rework or replace, as necessary, prior to accumulating 550 total hours TIS, in accordance with Sensenich Propeller SB No. R–14A, dated July 28, 1995. Remove from service those propellers that do not meet the inspection and rework requirements of Sensenich Propeller SB No. R–14A, dated July 28, 1995.

(e) Mark with a suffix letter ''K'' propellers that have been inspected and, reworked in accordance with Sensenich Propeller SB No. R–14A, dated July 28, 1995, and found satisfactory.

(f) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(h) The actions required by this AD shall be done in accordance with the following Sensenich Propeller SB's:

Document No.	Pages	Revision	Date
No. R–13	A7	Original	April 11, 1969.
Total pages: 1			
No. R–14A	1	Original	July 28, 1995.
Total pages: 1.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sensenich Propeller Manufacturing Company Inc., 519 Airport Road, Lititz, PA 17543; telephone (717) 569–0435, fax (717) 560- 3725. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 13, 1996.

Issued in Burlington, Massachusetts, on April 22, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11257 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 981

[Docket No. 951213299–6096–02]

RIN: 0648–AI42

Ocean Thermal Energy Conversion Licensing Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; removal.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is removing Part 981 from Title 15 of the Code of Federal Regulations (Part 981). Part 981 implements the Ocean Thermal Energy Conversion (OTEC) Licensing Program, which was established under the Ocean Thermal Energy Conversion Act of 1980, as amended, (OTEC Act), 42 U.S.C. 9101 *et seq*. No applications under Part 981 for licenses of commercial OTEC facilities or plantships have yet been received by NOAA, and there has been a low level of NOAA activity under the OTEC Act. During this 15 year period of time, the availability and relatively low price of fossil fuels, coupled with the risks to potential investors, has limited the interest in the commercial development of OTEC projects. Removal of Part 981 at this time will allow NOAA to evaluate the appropriateness of these, or any other, regulations at such time as interest in the commercial development of OTEC projects occurs.

EFFECTIVE DATE: June 10, 1996.

ADDRESSES: Karl Jugel, Chief, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James Lawless, Deputy Director, Office of Ocean and Coastal Resource Management, at (301) 713–3155.

SUPPLEMENTARY INFORMATION:

I. Regulatory Review

The National Oceanic and Atmospheric Administration (NOAA) is removing Part 981 of 15 CFR, pursuant to the Regulatory Reform Initiative of President Clinton and the Ocean Thermal Energy Conversion Act of 1980, as amended.

In March 1995, President Clinton issued a directive to federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake, as part of this initiative, an exhaustive review of all their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform.

The Ocean Thermal Energy Conversion Act of 1980, as amended, (OTEC Act), 42 U.S.C. 9101 *et seq*., also requires that NOAA periodically review the regulations that apply to the licensing of OTEC facilities and plantships. The fundamental purpose of the review is to determine if the regulations themselves impose an adverse impact on the development and commercialization of OTEC technology.

On January 30, 1996, NOAA published a notice in the Federal Register in which it proposed removing Part 981 and requested all interested persons to comment on the proposal (61 FR 2969–2971). Comments were in particular invited on whether the OTEC regulations, or their removal at this time, impose an adverse impact on the development and commercialization of OTEC technology. NOAA received no comments on its proposed removal of Part 981.

II. Ocean Thermal Energy Conversion Licensing Program

The OTEC Act established a licensing and permitting system for the development of OTEC as a commercial energy technology. Part 981 implements the OTEC Licensing Program. The proposed rule preceding this rulemaking summarizes the development of Part 981 (61 FR 2969–2971). No applications under Part 981 for licenses of commercial OTEC facilities or plantships have yet been

received by NOAA, and there has been a low level of NOAA activity under the OTEC Act. During this 15 year period of time, the availability and relatively low price of fossil fuels, coupled with the risks to potential investors, has limited the interest in the commercial development of OTEC projects.

NOAA is authorized, consistent with the purposes and provisions of the OTEC Act, to amend or rescind the OTEC regulations. In particular, section 117 of the OTEC Act requires NOAA to review the regulations on a periodic basis. NOAA is authorized and directed to revise the regulation as necessary and appropriate to ensure that the regulations do not impede the development, evolution, and commercialization of OTEC technology.

Given that a commercial OTEC industry has yet to develop, Part 981 remains unused for the most part. Removal of Part 981 at this time is consistent with the purposes and provisions of the OTEC Act in that it will allow NOAA to evaluate the suitability of these regulations at such time as interest in the commercial development of OTEC projects occurs. At such time, NOAA will issue a proposed rule appropriate to the then current regulatory needs. Potential Licensees will therefore be assured that any future OTEC regulations will be up to date, and will continue to provide innovation and flexibility necessary for an emerging OTEC industry.

NOAA is mindful of its responsibility for licensing of commercial OTEC facilities and plantships under the OTEC Act, however, and will take appropriate steps to review and process an application should one be made. For particular inquiries into the licensing of OTEC projects in the interim period, NOAA will provide copies of the provisions of these OTEC regulations in response to such inquiries. Thus, NOAA will provide actual and timely notice of applicable procedures and requirements to particular individuals. *See* 5 U.S.C. 552(a). Accordingly, NOAA is removing Part 981, the OTEC regulations, from Title 15 of the CFR.

III. Miscellaneous Rulemaking Requirements

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

No licenses have been issued for OTEC projects under 15 CFR Part 981. When commercial interest in OTEC projects occurs, NOAA will issue a proposed rule appropriate to the regulatory needs at that time. For particular inquiries into the licensing of OTEC projects in the interim period, NOAA will provide actual and timely notice of applicable procedures and requirements to particular individuals. *See* 5 U.S.C. 552(a). For these reasons, the removal of Part 981 is not expected to have a significant economic impact on a substantial number of small entities, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As such, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This regulatory action does not contain an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. No applications for licenses of commercial OTEC facilities or plantships have yet been received by NOAA, and Part 981 remains unused for the most part. When commercial interest in OTEC projects occurs, NOAA will issue a proposed rule appropriate to the regulatory needs at that time. For particular inquiries into the licensing of OTEC projects in the interim period, NOAA will provide actual and timely notice of applicable procedures to particular individuals. *See* 5 U.S.C. 552(a). Therefore, and environmental impact statement is not required.

Authority: Ocean Thermal Energy Conversion Act of 1980, as amended, 42 U.S.C. 9101 *et seq.*

List of Subjects in 15 CFR Part 981

Administrative practice and procedures, Energy, Environmental protection, Intergovernmental relations, Marine resources, Penalties, Reporting and recordkeeping requirements.

Dated: May 2, 1996.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, Chapter IX of Title 15 of the Code of Federal Regulations is amended as follows:

PART 981—OCEAN THERMAL ENERGY CONVERSION LICENSING PROGRAM—[REMOVED]

1. Under the authority of the Ocean Thermal Energy Conversion Act of 1980, Part 981 is removed.

[FR Doc. 96–11464 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0216]

Food Labeling: Nutrient Content Claim for ''Extra''; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of March 22, 1996 (61 FR 11730). The document authorizes the use, on food labels and in food labeling, of the term ''extra'' as a synonym for the term ''added.'' The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: March 22, 1996.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

In FR Doc. 96–6942, appearing on page 11730 in the Federal Register of Friday, March 22, 1996, the following corrections are made:

1. On page 11730, in the third column, in the first full paragraph, in the first line, the date ''March 21, 1995'' is corrected to read ''March 21, 1994''.

2. On page 11731, in the first column, under section ''V. Public Comment'', in the second paragraph, the fifth line, the first word, ''proposal'', is corrected to read ''final rule.''

Dated: May 1, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–11516 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Medetomidine Hydrochloride Injection; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Orion Corp. ORION–FARMOS. The NADA provides for the use of medetomidine hydrochloride injection in dogs for its sedative and analgesic properties. The regulations are also amended to reflect a change of sponsor name.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Orion Corp. ORION–FARMOS, (formerly Orion Corp. FARMOS), P.O. Box 425, SF–20101 Turku, Finland, filed NADA 140–999, which provides for intravenous or intramuscular use of Domitor® (medetomidine hydrochloride) injection as a sedative and analgesic in dogs over 12 weeks of age to facilitate clinical examinations, clinical procedures, minor surgical procedures not requiring muscle relaxation, and minor dental procedures not requiring intubation. The drug product is available by prescription. The application is approved as of March 19, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.1335 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Additionally, the firm has informed FDA that it has changed its corporate name from Orion Corp. FARMOS to Orion Corp. ORION–FARMOS. Accordingly, the agency is also amending 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 19, 1996, because no active ingredient (including any ester or salt of the active ingredient) of the drug has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the sponsor name ''Orion Corp. FARMOS, Research and Development, Pharmaceuticals,'' and by adding in its place ''Orion Corp. ORION–FARMOS'', and in the table in paragraph (c)(2) in the entry for ''052483'' by removing the sponsor name ''Orion Corp. FARMOS, Research and Development, Pharmaceuticals,'' and adding in its place ''Orion Corp. ORION–FARMOS''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 522.1335 is added to read as follows:

§ 522.1335 Medetomidine hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 1.0 milligram of medetomidine hydrochloride.

(b) *Sponsor.* See 052483 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 750 micrograms intravenously (IV) or 1,000 micrograms intramuscularly per square meter of body surface. The IV route is more efficacious for dental care.

(2) *Indications for use.* As a sedative and analgesic in dogs over 12 weeks of age to facilitate clinical examinations, clinical procedures, minor surgical procedures not requiring muscle relaxation, and minor dental procedures not requiring intubation. The intravenous route of administration is more efficacious for dental care.

(3) *Limitations.* Do not use in dogs with cardiac disease, respiratory disorders, liver or kidney diseases, dogs in shock, dogs which are severly debilitated, or dogs which are stressed due to extreme heat, cold, or fatigue. Allow agitated dogs to rest quietly before administration. Do not repeat dosing in dogs not responding satisfactorily to treatment. Do not use in breeding or pregnant animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 15, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–11511 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Halofuginone Hydrobromide, Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for using approved single ingredient Type A medicated articles to make Type C medicated turkey feeds containing halofuginone hydrobromide and bacitracin methylene disalicylate.

EFFECTIVE DATE: May 9, 1996

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1607.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, has filed NADA 140–919, which provides for use of approved Stenorol® (2.72 grams of halofuginone hydrobromide per pound of Type A article) and approved BMD® (30, 50, or 60 grams of bacitracin methylene disalicylate per pound) to make Type C medicated turkey feeds containing 1.36 to 2.72 grams per ton (g/t) halofuginone hydrobromide and 10 to 50 g/t bacitracin methylene disalicylate, for prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides, E. meleagrimitis*, and *E. gallopavonis*, and for increased rate of weight gain.

The NADA 140–919 is approved as of May 9, 1996, and the regulations are amended in § 558.265(c)(2)(ii) (21 CFR 558.265(c)(2)(ii)) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This approval is for use of single ingredient Type A medicated articles to make Type C medicated feeds. Halofuginone hydrobromide is a Category II drug which, as provided in § 558.4, requires an approved form FDA 1900 for making a Type C medicated feed. Therefore, use of halofuginone hydrobromide and bacitracin methylene disalicylate Type A medicated articles to make a combination drug Type C medicated feed as provided in NADA 140–919 requires an approved form FDA 1900.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for use in food-producing animals qualifies for 3 years of marketing exclusivity beginning May 9, 1996, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.265 is amended by adding new paragraph (c)(2)(ii) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) * * *

(2) * * *

(ii) *Amount per ton*. Halofuginone hydrobromide 1.36 to 2.72 grams plus bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use*. For prevention of coccidiosis caused by *Eimeria adenoeides, E. meleagrimitis*, and *E. gallopavonis*, and for increased rate of weight gain in growing turkeys.

(B) *Limitations*. Feed continuously as sole ration. Withdraw 7 days before slaughter. Do not feed to laying chickens or water fowl. Keep out of lakes, ponds, and streams. Halofuginone is toxic to fish and aquatic life. Halofuginone is an irritant to eyes and skin. Avoid contact with skin, eyes, or clothing.

Dated: April 26, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–11514 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF–371; RE: Notice Nos. 800 and 805]

RIN: 1512–AB26

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material (93F–059P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends the wine regulations in 27 CFR Part 24 to add or modify the use of 3 wine treating processes and to add the use of 1 new wine treating material. The use of these new or modified wine treating processes and materials has been found to be acceptable in ''good commercial practice'' in the production, cellar treatment, and finishing of wine, pursuant to the provisions of Section 5382 of the Internal Revenue Code of 1986, since their use will not alter vinous character or pose any health, safety, or consumer deception problems.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Robert White, Coordinator, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Several members of the wine industry petitioned ATF for approval of the use of 3 wine treating processes and 1 wine treating material in the production, cellar treatment, and/or finishing of wine. Only one of the processes, the spinning cone column, is new and would be used to reduce the ethyl alcohol content of wine or to remove off flavors in wine. The other two processes are not new but either would be used in combination or would be used for a different purpose or at a different limitation than previously authorized. The processes to be used in combination are reverse osmosis and ion exchange

and would be used to remove excess volatile acidity from wine. The process which would be used at a different limitation is ultrafiltration. And finally, the new wine treating material, urease enzyme, would be used to reduce urea in wine, thereby reducing the possibility of ethyl carbamate formation during wine storage.

Notice No. 800

On September 30, 1994, ATF published a notice of proposed rulemaking (Notice No. 800) in the Federal Register requesting that all interested parties submit written comments by November 29, 1994. Nine comments were received including 2 comments which requested an extension of the comment deadline. Due to the requests for an extension of the comment period, ATF published a reopening notice (Notice No. 805) in the Federal Register on January 18, 1995, which reopened the comment period for 60 days ending on March 20, 1995. Three comments were received in response to the reopening notice making a total of 12 comments received in response to the 2 wine treating notices.

Summary of Comments

Six of the commenters stated that they fully support the use of the spinning cone column to reduce the ethyl alcohol content of wine or to remove off flavors from wine. One of the six commenters, Mr. Vincent Indelicato of Delicato Vineyards, also asked that the spirits derived from the spinning cone column process, if at a minimum proof of 100 or above, be approved for wine spirits additions without any restrictions. Mr. Indelicato also asked that spinning cone column de-essenced juice be allowed in all standard winemaking including the fermenting of this de-essenced juice into standard wine. Five of the six commenters who addressed the use of the spinning cone column also stated that they support the additional requests made by Mr. Indelicato.

One of the six commenters mentioned above, Mr. Robert G. Kalik of the American Vintners Association (AVA), also stated that the AVA fully supports the 3 new or modified wine treating processes and the 1 new wine treating material proposed in Notice No. 800.

Another commenter, Mr. Clark Smith and Mr. Rick Jones of Vinovation, Inc., submitted a joint comment stating that Vinovation fully supports the use of reverse osmosis and ion exchange in combination in a closed system to remove excess volatile acidity from wine. They also state in a separate comment that it is their understanding that use of the spinning cone column to remove volatile acidity from wine is not very practical since such removal of volatile acidity would result in an equal proportion of ethanol being removed from the wine.

Two additional commenters in the wine industry state that they fully support the use of reverse osmosis along with ion exchange to remove excess volatile acidity in wine. Both state that wine which has undergone this treatment to remove excess volatile acidity has been greatly improved in quality. Both commenters believe that adoption of this wine treating process will represent a real benefit to the wine industry as well as to the consumer.

Two commenters to Notice No. 800 asked for an extension of the comment period to give them more time to analyze the wine treating proposals and to prepare a response. One of these commenters represents the Delegation of the European Commission (EC) and the other represents the French government.

The final comment was from the Delegation of the European Commission in response to Notice No. 805 which reopened the comment period for 60 days. This commenter states that the comment represents the views of the European Community. The commenter states that the European Community is concerned at the possibility of introduction into regular winemaking of the wine treating processes and materials mentioned in the notice of proposed rulemaking and considers that their utilization could be problematic for such wines imported into the European Union. The commenter also states that approval of such processes and materials could complicate the ongoing negotiations for an EC/US wine agreement.

The commenter states that the European Community would like to draw attention to the fact that the processes and materials described in the notice are not currently authorized by Council Regulation (EEC) No. 822/87, particularly Title II, which lays down European Community rules governing oenological practices and processes, and Annex VI, which lists the practices and processes authorized for wines marketed in the European Union; nor are these processes and materials included in the Annex to Council Regulation (EEC) No. 1873/84, which details the oenological practices authorized for wine imported into the European Union from the United States.

Moreover, the commenter states that the new materials and processes described in the notice are not included in the International Code of Oenological Practices of the International Vine and Wine Office (OIV) which is approved by the governments of the member countries of the OIV. The commenter states that except for the use of urease, these practices have not yet even been the subject of preliminary discussions nor have they been communicated to this international forum.

In conclusion, this commenter states that the European Community would suggest that utilization of the materials and processes proposed in Notice No. 800 would best be considered within the bilateral framework of the ongoing negotiations for an EC/US wine agreement and within the multilateral framework of the OIV. Consequently, this commenter states that the European Commission urges that the U.S. authorities take no action on approving these materials and processes until such consultations with the EC and OIV have taken place.

ATF Decision

After careful consideration of the comments, ATF has decided to approve the 3 wine treating processes and 1 wine treating material proposed in Notice No. 800. These 3 wine treating processes and 1 wine treating material have the support of the U.S. wine industry and have been determined to be in accordance with good commercial practice. Use of these 3 processes and 1 material will be a significant benefit to consumers and to the wine industry by enabling industry members to exercise additional quality control in the production of their wines.

ATF acknowledges that the European Community has not currently approved the use of these 3 wine treating processes and 1 wine treating material in their wines. However, we have decided to go ahead and approve these processes and materials for use by U.S. wine producers because, after careful review, we have concluded that their use complies with the statutory standard of good commercial practice.

ATF does not believe that it should prevent the use of new wine treating processes and materials that have been found to be beneficial to industry members and consumers alike, since it has determined that the wine treatments do not alter vinous character or pose any health, safety, or consumer deception problems. In addition, we feel that the ongoing wine negotiations with the European Community do not foreclose or restrict our domestic rulemaking decisions implementing statutory standards under U.S. laws.

In regard to the requests to use spirits derived from the spinning cone column process for wine spirits additions and the use of de-essenced juice derived from the spinning cone column process

in all standard winemaking, we have determined that we need more time to thoroughly analyze these requests and will address these issues at a later time.

Wine Treating Processes

Spinning Cone Column

The spinning cone column (SCC) is a gas-liquid contacting device which can process a wide range of products including slurries with very high solids contents. It is a multi-stage mass transfer device consisting of a series of alternating stationary and rotary truncated cones. During its operation the product is fed at the top of the column and then flows down the upper surface of the stationary cones under the influence of gravity and moves across the upper surface of the rotating cones in a thin film due to the applied centrifugal force. The stripping gas enters the bottom of the column and flows counter current to the liquid phase in the spaces between the fixed and rotating cones.

The SCC is used in the production of low alcohol wine, as well as to remove off flavors in wine (e.g. volatile acidity, ethyl acetate, hydrogen sulfide, etc.). In the production of low alcohol wine, the feed wine is initially run through the SCC to recover the volatile wine flavor essence. In the second stage of processing, the flavor essence reduced wine is run through the SCC to reduce the alcohol in the wine to the desired level. The essence, which has previously been removed, is then added back to the alcohol reduced wine to produce a low alcohol wine which retains its original flavor. The alcohol which has been removed from the wine can then either be used in accordance with law and regulations or be destroyed.

Treatment of wine utilizing the SCC to remove off flavors, or to reduce the alcohol content of the wine, may not alter the vinous character of the wine. Otherwise, the wine will no longer be considered standard wine.

Since the separation of alcohol from a fermented substance is considered to be a distilling process, the SCC operations cannot be conducted at winery premises but must instead take place at distilled spirits plant premises.

The SCC operations must be conducted in accordance with the following conditions:

1. The SCC removal of any alcohol from the wine will be done on DSP premises.

2. Records will be maintained for each lot of wine put through the SCC and the fractions derived from such wine showing the date, quantity, and disposition of each fraction.

3. In the production of reduced alcohol standard wines using the SCC, the same amount of essence will be added back to any lot of wine as was originally removed.

4. The destruction of any alcohol or other fractions derived from the SCC process must be in accordance with the provisions of 27 CFR 19.691.

Reverse Osmosis and Ion Exchange

In this process, reverse osmosis and ion exchange are used in combination to remove volatile acidity (VA) from bulk wine. The process combines two technologies already widely in use in the wine industry.

The process involves utilizing reverse osmosis to separate wine into various components and then using ion exchange to remove VA. The wine components, minus the VA, are then recombined in-line to form the original wine minus the VA. The whole process takes place in a closed system.

Regulations at 27 CFR 24.248 were previously broad enough to allow ion exchange to be used to remove volatile acidity from wine or from various components of wine. However, those regulations did not authorize reverse osmosis to be used for anything other than to reduce the ethyl alcohol content of wine. This regulation change will allow reverse osmosis to also be used to remove off flavors in wine which will enable it to be used as part of an overall process in a closed system to remove VA from wine.

Normally, reverse osmosis must be done on distilled spirits plant premises because it is considered a distilling process resulting in a distilled spirits by-product. However, in this case, the various components of wine will only be created temporarily in a closed system and will be immediately recombined in-line to reconstitute the original wine minus VA. Consequently, ATF has concluded that this type of reverse osmosis may be conducted on bonded winery premises since no separate distilled spirits product is created as a final product or by-product.

Accumulation of ethyl alcohol outside the closed system is not allowed. Any accumulation of an ethanol solution on winery premises may subject the proprietor to the distilled spirits tax of $13.50 per proof gallon imposed by Section 5001 of the Internal Revenue Code.

The footnote concerning processes which must be done on distilled spirits plant premises, located at the end of 27 CFR 24.248, has been revised to state that under certain limited conditions, reverse osmosis may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

Ultrafiltration

Previous regulations at 27 CFR 24.248 allowed ultrafiltration to be used for various filtration purposes as long as the following conditions were met:

(a) Permeable membranes are used which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures which do not exceed 100 pounds per square inch (psi).

(b) Use shall not alter vinous character.

This final rule amends the regulations to allow greater transmembrane pressures to be used and still be considered ultrafiltration. The revised regulations allow less than 200 psi in lieu of the current 100 psi. This more liberal pressure limitation will provide for greater throughput with no change in the vinous character of the finished wine. Without this increase in throughput, the process is not economically viable for many industry members since they can achieve the same result with other methods at a much lower cost.

The less than 200 psi pressure limitation was chosen as the upper limit in order to maintain a clear distinction between ultrafiltration and reverse osmosis in terms of pressure. The two processes are also differentiated by the fact that the membranes specified for reverse osmosis have a much smaller pore size than those used in ultrafiltration.

New Wine Treating Material

Urease Enzyme

The use of urease enzyme derived from *Lactobacillus fermentum* has been found to reduce levels of naturally occurring urea in wine thereby helping to prevent the formation of ethyl carbamate during storage.

The enzyme is derived from the nonpathogenic, nontoxicogenic bacterium *Lactobacillus fermentum*. It contains the enzyme urease (CAS Reg. No. 9002–13–5) which facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is produced by a pure culture fermentation process and by using materials that are generally recognized as safe (GRAS) or are food additives that have been approved for this use by the Food and Drug Administration (FDA).

Urease enzyme from *Lactobacillus fermentum* was approved for use in wine by FDA on December 21, 1992,

effective January 21, 1993. The FDA regulation cite is 21 CFR 184.1924, Urease Enzyme Derived From *Lactobacillus Fermentum*.

The enzyme is standardized with glucose syrup solids and the urease activity is adjusted to 3.5 units/mg. Urease enzyme meets the general and additional requirements for enzyme preparations in the ''Food Chemicals Codex,'' 3rd edition (1981). In addition, the urease enzyme is used in food at levels not to exceed current good manufacturing practice as defined in 21 CFR 184.1924.

The composition of the urease enzyme preparation is as follows:

Killed whole cells of *Lactobacillus fermentum*	20–35%
Glucose Syrup Solids	65–80%

Due to the low usage level (10–200 ppm) and objective of usage, addition of glucose syrup solids in this case is not considered ''sweetening'' of the beverage, which is prohibited in the State of California for table wine.

The use of urease enzyme derived from *Lactobacillus fermentum* is economically self-limiting due to the high cost of the material. FDA, in their approval, did not set a specific numerical limit but rather limited its use to ''good commercial practice.''

Due to the recommendations from industry and from the ATF laboratory, we have established an upper limit for the use of urease enzyme in wine of 200 mg/L, provided that the enzyme is filtered prior to final packaging of the wine, as a ''good commercial practice.''

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is liberalizing in nature and will allow winemakers more flexibility when producing their wines with no negative impact on small entities. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected: (1) To have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly this final rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information: The principal author of this document is Robert L. White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan has provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority and Issuance

27 CFR Part 24—Wine is amended as follows:

PART 24—WINE

Par. 1. The authority citation for Part 24 continues to read as follows:

Authority: 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.246 is amended in the table in Paragraph (b) revising the entry for enzymatic activity, and by adding the new entry, ''Urease'', immediately after and directly under Protease (Trypsin), to read as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

* * * * *

(b) * * *

Materials and use	Reference or limitation
* * * * * * *	
Enzymatic activity: Various uses as shown below	The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion.
* * * * * * *	
Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate.	The urease enzyme activity shall be derived from *Lactobacillus fermentum* per 21 CFR 184.1924. Use is limited to not more than 200 mg/L and must be filtered prior to final packaging of the wine.
* * * * * * *	

PAR. 3. Section 24.248 is amended in the table by revising the entries for ''Reverse osmosis'' and ''Ultrafiltration'', by adding the entry for ''Spinning cone column'', and by revising the footnote at the end of the section to read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

* * * * *

Processes	Use	Reference or limitation
*	* *	* * * *
Reverse osmosis [1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine,.	Permeable membranes which are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine ''other than standard.'' Use shall not alter vinous character.
Spinning cone column [1]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine,.	Use shall not alter vinous character. For standard wine, the same amount of essense must be added back to any lot of wine as was originally removed.
*	* *	* * * *
Ultrafiltration	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes.	Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Use shall not alter vinous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910.

[1] This process must be done on distilled spirits plant premises. However, reverse osmosis, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

Signed: March 11, 1996.

Bradley A. Buckles,

Acting Director.

Approved: April 1, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–11611 Filed 5–8–96; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5502–4]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On March 7, 1996, the state of Mississippi, through the Department of Environmental Quality, requested that EPA delegate authority for implementation and enforcement of eight (8) ammended categories of the New Source Performance Standards (NSPS). Since EPA's review of Mississippi's pertinent laws, rules, and regulations showed them to be adequate and effective procedures for the implementation and enforcement of these Federal standards, EPA has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is April 15, 1996.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365

Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address: Office of Pollution Control, Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–3555, x4216.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, (NSPS).

On November 10, 1981, EPA initially delegated the authority for implementation and enforcement of the NSPS programs to the state of Mississippi. On March 7, 1996, Mississippi requested a delegation of authority for implementation and enforcement of the following NSPS categories found in 40 CFR Part 60.

1. Subpart A—General Provisions Except § 60.8(b) (1) Thru (5); § 60.11(e) (7) and (8); § 60.13(g) (i) and (j)(2)

2. Subpart Cb—Municipal Waste Combustors Constructed On or before December 19, 1995

3. Subpart Cd—Sulfuric Acid Production Units

4. Subpart Ea—Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994

5. Subpart Eb—Municipal Waste Combustors For Which Construction is Commenced After September 20, 1994

6. Subpart NNN—Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

7. Subpart RRR—Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Process

8. Appendix A—Test Methods

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with the conditions set forth in the original delegation letter of November 30, 1981. Mississippi sources subject to the

requirements of this subpart will now be under the jurisdiction of Mississippi.

Since review of the pertinent Mississippi laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS, the EPA hereby notifies the public that it has delegated the authority for the source category listed above on October 30, 1995. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Authority: This notice is issued under the authority of sections 101, 111, and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7411, and 7601).

Dated: April 24, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–11478 Filed 5–8–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

46 CFR Parts 403 and 404

[OST Docket No. 50248]

RIN 2105–AC21

Great Lakes Pilotage Rate Methodology

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (the Department) is responding to comments to a final rule published April 11, 1995, establishing new procedures and methodology for determining Great Lakes pilotage rates and making corresponding changes to the financial reporting requirements required of Great Lakes pilot associations. Based on these comments, the Department has made minor changes to the rule. This final rule does not change the existing Great Lakes pilotage rates and charges.

EFFECTIVE DATE: This rule is effective on June 10, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Docket Clerk, OST Docket No. 50248, U.S. Department of Transportation, 400 7th St. SW., room PL–401, Washington, DC 20590 from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Project Manager, St. Lawrence Seaway Development Corporation, 400 Seventh St. SW, Room 5421, Washington, DC 20590, 1–800–785–2779, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St. SW., room 10424, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 7, 1988, the Department of Transportation published the Great Lakes Pilotage Study Final Report (1988 DOT Pilotage Study). The study revealed weaknesses in accounting for the expenses incurred by the pilot associations and the need to formally establish the factors used in establishing pilotage rates. On April 25, 1990, the Coast Guard published a final rule (55 FR 17580) establishing improved audit requirements and general guidelines and procedures to be followed in ratemaking (CGD 92–072).

In May 1990, the Inspector General (IG) for the Department of Transportation initiated an audit of Coast Guard oversight of Great Lakes pilotage. The final report of the audit (Audit of the U.S. Coast Guard's Oversight and Management of the Great Lakes Pilotage Program), detailing further issues affecting the basis for Great Lakes pilotage rates, was issued on December 14, 1990.

On August 2, 1991, a DOT Task Force was formed to: (1) Develop an interim rate adjustment; and (2) establish a new pilotage ratemaking methodology. On June 5, 1992, an interim rate increase was published (CGD 89–104). The DOT Task Force then developed a new pilotage ratemaking methodology, which the Coast Guard published in a notice of proposed rulemaking (NPRM) (59 FR 17303) dated April 12, 1994.

THE NPRM proposed to amend the Great Lakes pilotage regulations by establishing new procedures for determining Great Lakes pilotage rates and revising the financial reporting requirements mandated for Great Lakes pilot associations (CGD 92–072). The NPRM also announced a public hearing which was held in Cleveland, OH on May 20, 1994. The comment period for the NPRM ended on July 11, 1994.

In response to the NPRM and the public hearing, the Coast Guard received 31 comments and two requests for additional public meetings to explain the proposals contained in the NPRM. In the Federal Register (59 FR 18774) on April 20, 1994, the Coast Guard announced that it would conduct two public meetings. The first public meeting was held in Chicago, IL on May 3, 1994. The second public meeting was held in Massena, NY on May 5, 1994.

The Coast Guard also received one request to extend the comment period for the NPRM. Because the comment period for the NPRM was 90 days, the Coast Guard and the Department determined that there was sufficient time to submit comments. Therefore, the comment period was not extended.

On April 11, 1995, the Department published a final rule with request for comments (60 FR 18366) (1995 final rule) establishing improved procedures for determining Great Lakes pilotage rates, and revised financial reporting requirements mandated for Great Lakes pilot associations. The comment period ended on May 11, 1995. Although the Coast Guard issued the NPRM under authority delegated to the Commandant by the Secretary, the Secretary issued the 1995 final rule. On December 11, 1995, the Secretary transferred authority to administer the Great Lakes Pilotage Act of 1960 (Public Law 86–555, 46 U.S.C. 9301 *et seq.*) (the Act) to the Administrator of the SLSDC. Nevertheless, the Secretary is issuing this final rule. Under 49 CFR 1.43(a), the Secretary may exercise powers and duties delegated or assigned to officials other than the Secretary.

Several commenters requested that the comment period for the rulemaking be extended. Because all late-filed comments were considered, and because this rulemaking has already been the subject of extensive public comment, the Department determined that there was sufficient time to submit comments regarding this 1995 final rule. Therefore, the comment period was not extended.

Background and Purpose

Under the Act, vessels of the United States operating on register and foreign vessels must engage a U.S. or Canadian registered pilot when traversing the waters of the Great Lakes. The Act vests the Secretary of Transportation with responsibility for setting pilotage rates. Section 9303(f) of the Act provides that the Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.

Currently, the navigable waters of the great Lakes are divided into eight pilotage areas. United States registered pilots, along with their Canadian counterparts, provide pilotage services in areas 1, 2, 4, 5, 6, 7, and 8. Pilotage area 3 (the Welland Canal) is currently a wholly-Canadian area where only Canadian pilots provide services. Pilotage areas 2, 4, 6, and 8 are

''undesignated waters.'' Pilotage areas 1, 5, and 7 are ''designated waters.'' Pilots are required to direct the navigation of vessels in designated waters. Pilots are required to be on board and available to direct the navigation of vessels in undesignated waters. The seven U.S. pilotage areas are grouped together into three pilotage districts. District 1 consists of areas 1 and 2. District 2 consists of areas 4 and 5. District 3 consists of areas 6, 7, and 8. Each district has its own pilot association.

Section 9305 of the Act provides that the Secretary of Transportation, subject to the concurrence of the Secretary of State, may make arrangements with the appropriate agency of Canada to prescribe joint or identical rates and charges. The latest Memorandum of Arrangements between the United States and Canada, dated January 18, 1977, specifies that the Secretary of Transportation of the United States of America and the Minister of Transport of Canada will establish regulations imposing identical rates. A copy of this Memorandum of Arrangements is available in the docket and may also be obtained by writing to Scott A. Poyer, at the address listed under **FOR FURTHER INFORMATION CONTACT**, above. In the past, consultations between the United States and Canada resulted in nominally identical U.S. and Canadian rates.

However, there are differences in the cost bases and in the operating organizations of the U.S. and Canadian pilots, particularly with regard to pilot compensation. These differences need to be takes into account in reaching identical U.S. and Canadian rates. As a result, the ratemaking methodology contained in this final rule would not translate directly into new rates, but rather would form the basis for proposals to be negotiated with Canada.

Discussion of Comments and Changes

The Department received nine comments and thirteen endorsements of one of the nine comments. Comments came from one Great Lakes pilot association, three Great Lakes Registered Pilots, one professional association representing pilots, one professional association representing vessel operators and steamship agents on the Great Lakes, one labor organization, one professional auditor, and the comptroller of one Great Lakes pilot association with thirteen endorsements by individual members of that association. Some of the comments addressed issues that were not the subject of the 1995 final rule. The Department is responding only to those comments relating to this rulemaking.

Three comments were generally supportive of the 1995 final rule and characterized it as an improvement over the NPRM, but with some areas that still need improvement. These comments were made by one pilot group, one professional organization representing pilots, and one labor organization. Six comments objected to the 1995 final rule because it was considered to be confusing, not viable, or not in concurrence with the DOT IG's intentions. These comments were made by one professional organization representing vessel agents, one professional auditor, three Great Lakes Registered pilots, and one comptroller of a Great Lakes pilot association with thirteen endorsements. The Department believes most of the methodology presented in the 1995 final rule represents a workable compromise between the disparate interests involved. Therefore, the ratemaking methodology presented in the 1995 final rule is substantially retained in this final rule.

Four commenters objected to what they perceived as the 1995 final rule's ''elimination of annual audits.'' The two types of audits discussed in the Great Lakes pilotage regulations (i.e., audits by pilot associations, and audits by the Director) are discussed in 46 CFR §§ 403.300(b) and 404.1(b). Commenters believed that the amended wording of these sections eliminated a requirement that pilot associations and/or the Director conduct annual audits of the pilot associations. Commenters believed the elimination of these annual audit requirements would weaken financial oversight of pilot associations and encourage spending abuse.

In fact, the 1995 final rule did not eliminate annual audits. Pilot associations were still required to obtain an annual audit by an independent certified public accountant.

However, the Department agrees that the wording of the audit requirements was not as clear as it could have been. To make this requirement more clear, the language of section 403.300(b) has been amended to reinforce the requirement that pilot associations be audited by an independent CPA every year, and to require that the audit results be forwarded to the Director every year. Section 404.1(b) has been amended to reinforce the requirement that the Director review the annual association audits every year, and conduct a thorough audit of pilot association expenses at a minimum of once every five years.

One commenter stated that certification of financial reports by an association officer, as required by 46 CFR § 403.300(a)(3), is redundant and ''prejudicial'' to the association's regular financial reporting. The Department does not understand how certification of financial documents could in any way be ''prejudicial,'' and the commenter did not elaborate on this point. The Department agrees that there is a certain amount of redundancy in requiring an association officer such as a Treasurer, to review the work of a bookkeeper or accountant who prepares the financial reports. However, this redundancy is standard procedure in most well-managed businesses, and is an important safeguard against waste, fraud, and abuse. For these reasons, section 403.300(a)(3) is retained.

One commenter objected to section 404.5(a)(2) which requires the Director to determine the reasonableness of pilot association expenses by comparing them to comparable expenses paid by others in the maritime industry. The commenter believes that there are no industries on the Great Lakes comparable to Great Lakes pilotage, as pilotage is ''vastly different'' from other industries. The department disagrees. The commenter did not elaborate on how pilotage was different from all other industries. Pilots operate in the same marketplace as other maritime industries on the Great Lakes, and incur many of the same types of expenses. The Department does not believe there is any basis for the claim that pilotage expenses cannot be compared with anything else; therefore section 404.5(a)(2) is retained.

One commenter stated that the provisions of 46 CFR § 404.5(a)(5) are unclear, inappropriate, and unfair. This section requires that profits, but not losses, from non-pilotage transactions be included in ratemaking calculations. The Department designed this section as a disincentive to pilot association speculation in non-pilotage related businesses, since the Department does not consider these types of transactions to be in the public interest. As such, section 404.5(a)(5) accomplishes its intended objective, and is therefore retained.

One commenter objected to 46 CFR § 404.5(a)(8)(ii), which provides that lobbying expenses will not be allowed for ratemaking purposes. The Department has no objection to pilot associations who wish to expend money for lobbying purposes. However, it does not seem reasonable to make others, i.e., those members of the public who pay pilotage rates, pay for these expenses. Therefore, section 404.5(a)(8)(ii) is retained.

Four sets of comments from pilots and their representatives questioned the

methods used to compute pilot compensation targets and pilot work hour targets, which are used to set the number of pilots for ratemaking purposes. These methods are contained in Step 2 of Appendix A to Part 404, and section 404.5(a). This section continues the Department policy of maintaining income comparability between Great Lakes Registered Pilots, and masters/chief mates on Great Lakes vessels, and the Department's pilot work hour targets of 1000 hours in designated waters and 1800 hours in undesignated waters. These policies were established as a result of the 1988 DOT Pilotage Study, which examined many alternatives and selected the master/chief mate targets and the work hour targets. Commenters believed pilots should earn more than masters/chief mates, and/or pilots should work fewer hours. Commenters proposed several alternatives including income comparability with State pilots, and inclusion of travel time in the calculation of pilot work hours. After considering all the alternatives, the Department is keeping this section of the final rule unchanged. This is fully consistent with the recommendation in the 1988 DOT Pilotage Study, which states, ''The study team believes that pilot compensation should be tied to the local economy. The use of local masters and mates pay scales has the important impact of tying pilot compensation to the regional industry pay levels. Salaries of pilots, like those of teachers, physicians, lawyers, and other professionals, are tied to the fluctuations of supply and demand for their services in their particular locality. In this fashion, Great Lakes pilots share in the fortunes of the Great Lakes.'' Commenters offered no new information that alters this assessment. Therefore Step 2 of Appendix A to Part 404, and section 404.5(a) are retained.

One commenter objected to the Return on Investment (ROI) provisions detailed in Step 5 of Appendix A to Part 404. The commenter believed a ROI is not applicable or feasible for Great Lakes pilot associations because: (a) Pilot associations have no inventory, or investment in inventory, and accounts receivable are systematically collected within a 12 month period; (b) the value of fixed assets on the organizations' balance sheets is immaterial and all equipment is leased from related parties; (c) there is no stockholder's equity in two associations and in the third association it is not owned by all the pilots; and (d) the ROI would not have a significant impact on pilotage rates. As stated by the Department in the 1995 final rule, a return element is an important component of cost-based rate methodologies. Rates that have been set without a return element have been vulnerable to legal challenge and do not meet the goals of the investigations and audits that underlie this rulemaking. Also, in order to negotiate with the Canadians we must have rates that can withstand scrutiny as to their conformity to sound ratemaking principles. The Department believes it is only fair to allow pilots a return on the capital they invest. If, as the commenter asserts, it is true that pilot associations have little or no capital investments, then it is true that the return on these investments will be small. However, this does not invalidate the principle that pilots should receive a return on the capital they invest. Whether their capital be small or large, individuals who invest in a business have a right to expect a return on that capital. Therefore the ROI provisions of section 404.5(a)(4), step 5 of appendix A, and the formulas contained in appendix B are retained.

Two commenters believe the 1995 final rule should address the business structure of pilot associations. Currently two pilot associations are structured as partnerships and one pilot association is structured as a corporation. One commenter believes that the rule should better equalize for the differences in association structure. The other commenter recommends that the 1995 final rule require all associations to adopt the same business structure. At the present time, it is Department policy that each pilot association should be permitted to adopt the business structure that best suits its needs, and it is incumbent on each association to live with the costs and benefits inherent in its choice. This policy allows pilots the freedom to run their own businesses to the maximum extent practicable, with no discernably negative consequences for the public. The Department is not aware of any abuses of this policy at the present time. However, if it becomes necessary to reverse this policy, this matter would be the subject of a future rulemaking, subject to public input and comment.

One commenter recommends that the Great Lakes pilotage ratemaking methodology should be clear and easy to implement, and any future changes to the methodology should be made with the participation of the pilot associations and a committee of independent and professional individuals. The Department agrees. The Department has endeavored to make the ratemaking methodology contained in this rule as clear and easy as practical. In that regard, three commenters agree that the methodology contained in the 1995 final rule is an improvement over the methodology proposed in the NPRM. Any changes to the Great Lakes pilotage ratemaking methodology that may be the subject of future rulemakings will involve input and comments from the pilot associations and other members of the public.

Four commenters believe the 1995 final rule granted the Director of Great Lakes Pilotage too much authority and would allow the Director to micro-manage activities of the pilot associations of which the Director is not sufficiently knowledgeable. The Department disagrees. The incumbent Director of Great Lakes Pilotage is extremely knowledgeable of pilotage and other maritime activities. He has been involved in the performance of Great Lakes Pilotage Act functions for approximately 11 years. He is a licensed merchant mariner, and the former Head of the Navigation Department at the Maritime Institute of Technology and Graduate Studies, the advanced training facility of the International Organization of Masters, Mates and Pilots. Moreover, every previous Director of Great Lakes Pilotage has had an extensive maritime background, as well as experience in dealing with merchant mariners and pilots. The position description for the Director of Great Lakes Pilotage position requires a substantial maritime background. In addition, the remaining pilotage staff have extensive maritime backgrounds and their positions require maritime, economic, and ratesetting knowledge and experience. Therefore, the sections of the 1995 final rule related to the Director's authority and discretion are retained.

Two commenters believe the U.S. Government should cease oversight of Great Lakes Pilotage, including the ratemaking and financial oversight regulations contained in this rulemaking. The Department is making no changes pursuant to this comment. As stated earlier, the Act requires the Secretary to prescribe by regulation rates and charges for pilotage services.

Executive Order 12866

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979) because rulemaking affecting the setting of pilotage rates has been controversial and of significant interest to the public.

The Department expects the economic impact of this rule to be minimal. This rule does not represent a significant departure from the current ratemaking process, and there are no expected increases in costs. Therefore, a full regulatory evaluation is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). One commenter believes that this rule will have a significant economic impact on a substantial number of small entities. However, the commenter did not elaborate on why this impact would occur. Since this rule is not a major change from past rulemaking practices, and only three pilot associations with a total of approximately 40 members will be directly affected by this rule, this final rule should have little or no impact on small entities that pay pilotage rates or that receive income from pilotage rates. Because it expects the impact of this proposal to be minimal, the Department certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Department has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The part numbers are parts 401 and 403 and the corresponding OMB approval number is OMB Control Number 2115–0616.

Federalism

The Department has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. State action addressing pilotage regulation is preempted by 46 U.S.C. 9306, which provides that a State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.

Environment

The Department considered the environmental impact of this final rule and concluded that this rule is categorically excluded from further environmental documentation under section 2.B.2 of Commandant Instruction M16475.1B. The rule is procedural in nature because it deals exclusively with ratemaking and accounting procedures. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1,—Administrative actions or procedural regulations and policies which clearly do not have any environmental impact. A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Parts 403 and 404

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For reasons set out in the preamble, the Department proposes to amend Parts 403 and 404 of Title 46 of the Code of Federal Regulations as follows:

PART 403—[AMENDED]

1. The authority citation for part 403 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

2. Section 403.300(b) is revised to read as follows:

§ 403.300 Financial reporting requirements.

* * * * *

(b) Required Reports:

(1) By April 1 of each year, each Association shall obtain an annual unqualified long form audit report for the preceding year, audited and prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

(2) Each Association shall forward their annual unqualified long form audit report, and any associated settlement statements, to the Director no later than April 7 of each year.

PART 404—[AMENDED]

3. Section 404.1(b) is revised to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304, 49 CFR 1.46.

§ 404.1 General ratemaking provisions.

* * * * *

(b) Great Lakes pilotage rates shall be reviewed annually in accordance with the procedures detailed in Appendix C to this part. The Director shall review Association audit reports annually and, at a minimum, the Director shall complete a thorough audit of pilot association expenses and establish pilotage rates in accordance with the procedures detailed in § 404.10 of this part at least once every five years. An interested party or parties may also petition the Director for a review at any time. The petition must present a reasonable basis for concluding that a review may be warranted. If the Director determines, from the information contained in the petition, that the existing rates may no longer be reasonable, a full review of the pilotage rates will be conducted. If the full review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated.

Issued at Washington, DC this 2nd day of May, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–11499 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

49 CFR Parts 107, 171, 173 and 178

[Docket No. HM–207C, Amdt. Nos. 107–38, 171–141, 173–249, and 178–113]

RIN 2137–AC63

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA revises procedures for applying for exemptions and establishes procedures for applying for approvals, and registering and filing reports with RSPA. In addition, RSPA amends certain provisions, mostly procedural, in the Hazardous Materials Regulations. This rulemaking action is intended to expedite processing of applications and to promote clarity and program consistency. It is part of the President's Regulatory Reinvention Initiative to revise all agency regulations that are in need of reform.

DATES: *Effective date:* The effective date of these amendments is October 1, 1996.

Compliance date: Voluntary compliance with the regulations, as

amended herein, is authorized as of July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Stokes Molinar, Office of the Chief Counsel, (202) 366–4400, or Diane LaValle, Office of Hazardous Materials Standards, (800) 467–4922, RSPA, Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous material transportation law (Federal hazmat law; 49 U.S.C. 5101–5127) directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. RSPA is the agency within the Department of Transportation primarily responsible for implementing the Federal hazmat law. RSPA does so through the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). Under 49 U.S.C. 5117(a), RSPA is authorized to issue an exemption from specific requirements of the Federal hazmat law or the HMR if an applicant demonstrates that public safety will not be compromised. The procedures governing application for an exemption and the manner in which the application is processed are found at 49 CFR part 107, subpart B.

In numerous instances, the HMR require approval by, or registration with, RSPA before a person may engage in particular hazmat transportation-related activities in areas such as manufacturing and certifying hazardous material packagings, offering hazardous materials for transportation, and transporting hazardous materials. The HMR also impose reporting requirements on persons engaging in certain hazardous materials transportation activities. A significant portion of the regulated community is subject to one or more of these requirements. Procedures to be followed in seeking an approval from RSPA, registering with RSPA, or reporting to RSPA are often found in the HMR provision establishing the particular requirement, but in many cases these procedures are absent or incomplete.

This final rule revises procedures for exemptions in subpart B of part 107 and establishes procedures for approvals, registrations and reports in subpart H of part 107. Establishment of formal procedures for approval, registration, and reporting activities provides uniform and consistent guidance to all those who may be subject to these requirements in the HMR, and fosters consistency in RSPA's handling of these matters. Additionally, this final rule minimizes RSPA's need to seek additional information from applicants in order to complete the processing of these matters.

The procedures adopted in this final rule for approvals, registrations, and reports are limited in their application. Other Federal agencies (e.g., the United States Coast Guard (USCG) and the Federal Railroad Administration (FRA)) issue approvals or receive registrations or reports under the HMR. For example, under § 176.415, persons are required to obtain approvals from the USCG before loading or unloading certain explosives onto or from vessels. The procedures established in this rule apply only with respect to those matters under the HMR that are handled by RSPA. Those matters for which the HMR assign responsibility to other entities will continue to be handled according to the procedures of those entities.

II. Regulatory Reinvention Initiative

In a March 4, 1995 memorandum, the President directed Federal agencies to review all agency regulations and eliminate or revise those that are outdated or in need of reform. On April 4, 1995 (60 FR 17049), and July 28, 1995 (60 FR 38888), RSPA issued notices requesting comments on regulatory reform and announcing several public meetings nationwide to identify obsolete and burdensome regulations that can be eliminated from the HMR and techniques to improve RSPA's customer services. Some of the commenters responding to those notices and participating in the public meetings identified the exemption and approval procedures as areas in need of clarification and reform. This rule is consistent with the goals of the President to clarify and revise Federal agency regulations to relieve unnecessary regulatory burdens and to clarify regulatory requirements.

III. Summary of Comments and Regulatory Changes

On September 14, 1995, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM–207C (60 FR 47723). In the NPRM, RSPA proposed to revise the exemption procedures of subpart B of part 107 and adopt new procedures in subpart H of part 107 for approvals, registration, and reporting information to RSPA.

RSPA received 16 comments to the NPRM from offerors and carriers of hazardous materials, chemical and packaging manufacturers, consulting firms, and the United States Department of Energy. Commenters were generally supportive of RSPA's effort to revise and clarify the procedures for exemptions and establish procedures for approvals, registration, and reporting. The comments and RSPA's response to them are discussed below.

Part 107

Subpart A—General Provisions

§ 107.3 Definitions.

Commenters requested clarification of the difference between approvals and exemptions and, further, requested that RSPA explain the difference between an approval and a competent authority approval. An approval is a written authorization to take some action delineated in a particular regulation (e.g., § 173.21) in the HMR and is specifically authorized in that regulation. Approvals generally are limited in scope, such as in § 178.604(b)(2) that authorizes an applicant to apply for an approval to deviate from the number of samples used in conducting a leakproofness test. Because issuance of all approvals is specifically recognized in the HMR and almost all approval documents can be made available for public review, applications are not published in the Federal Register.

Sections 171.11 and 171.12 authorize compliance with international standards (i.e., the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Dangerous Goods Code (IMDG Code)) as an alternative to compliance with certain provisions of the HMR. For certain types of activities, both the ICAO Technical Instructions and the IMDG Code have provisions which require that the activity be approved by the competent authority of the country of origin. The Associate Administrator for Hazardous Materials Safety (Associate Administrator), RSPA, is the competent authority for the United States of America (see the definition of ''competent authority'' in 49 CFR § 171.8).

A competent authority approval means an approval by the competent authority which is required under the provisions of international regulations, such as the ICAO Technical Instructions or the IMDG Code. To the extent that it satisfies the requirement of the international regulations, any of the following may serve as a competent authority approval: a specific regulation of subchapter A or C, an exemption or approval issued under the provisions of subchapter A or C, or a separate document issued to one or more persons by the Associate Administrator. In other words, if an activity is authorized for international transport under the HMR,

then the HMR serves as the competent authority approval. An exemption or approval may serve as a competent authority approval provided the exemption or approval does not prohibit any international transport. To facilitate international commerce, for a function that relates only to a requirement of an international standard, and not to the HMR, the Associate Administrator may issue a competent authority approval as a separate document that is not related to either an approval or an exemption under the HMR.

An exemption allows an applicant to perform a function which is *not* authorized under the HMR and which, in fact, would be a violation of the HMR in the absence of the exemption. An exemption may involve an authorization to engage in a function for which there is no provision in the regulations. A ''manufacturing exemption'' is an exemption issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the exemption.

The process of applying for an exemption, as provided by the Federal hazardous materials transportation law (49 USC 5117), requires that the applicant provide documentation demonstrating that the proposed process or activity will meet a level of safety at least equivalent to that provided by the HMR or, if the regulations do not contain a specified level of safety, will be consistent with the public interest. Notice of most exemption applications is published in the Federal Register for public comment prior to their being granted or denied.

For clarity, RSPA is adopting definitions in § 107.3 for ''approval,'' ''competent authority approval,'' ''exemption,'' and ''manufacturing exemption'' to differentiate between approvals and exemptions and clarify the types of exemptions and approvals that are issued.

One commenter requested that the proposed term ''accident'' be replaced with ''incident'' to avoid confusion. The commenter stated that the word ''incident'' is currently used in the HMR and has the same connotation as the proposed definition of accident. The commenter also stated that other modal agencies within DOT use the term ''accident'' to mean a collision between moving vehicles (*e.g.,* the FHWA expressly defines ''accident'' as a motor vehicle collision). RSPA agrees and is adopting the term ''incident'' to refer to an event resulting in the unintended or unanticipated release of hazardous material or an event which meets incident reporting requirements in 171.15 or 171.16.

Another commenter suggested that RSPA define the term ''registration'' to describe what the term includes, rather than what it does not include. The commenter recommended that the wording '' 'registration' does not include registration under Subpart F or G of this part'' be removed. RSPA agrees that providing examples of the types of registration covered under this definition is beneficial and is adding several examples. RSPA has not granted the commenter's request to delete the language referencing specific registration requirements that are not included in the definition. RSPA believes that this exclusionary language provides as much guidance as a description of what types of ''registration'' are included in the definition.

No comments were received concerning other proposed definitions, and those definitions are adopted as proposed.

Subpart B—Exemptions

§ 107.101 Purpose and scope. One commenter requested that all exemptions be described as ''competent authority approvals'' to provide for greater acceptance outside the United States since competent authority approvals are accepted internationally. An exemption concerns a variance from the HMR and not the international regulations. As previously indicated, an exemption may be used as competent authority approval to the extent that it is suitable for international transport and satisfies the approval requirement of the applicable international regulation. However, a number of exemptions, such as those applicable to transportation by motor vehicle only, are not applicable under international regulations. Therefore, RSPA is not adopting the commenter's suggestion.

Another commenter suggested that RSPA adopt only two procedures: one for approvals and exemptions, and the other for registrations and reports. The commenter contended that the requirements, procedures, and justifications related to exemptions and approvals are sufficiently different that users of the regulations are better served by RSPA providing separate, self-contained provisions for exemptions and approvals. This commenter added that since applicants are not always sure whether to submit an application requesting an exemption, approval or registration, RSPA should be responsible for determining the appropriate action since the data required for each is the same. RSPA is not adopting the commenter's suggestion that RSPA determine the appropriate action for submitted applications because it is the applicant's responsibility to make this determination and the requirements are different. By defining the terms ''exemption,'' ''approval,'' and ''registration,'' as well as clarifying the procedures for obtaining each, RSPA is assisting applicants in determining the appropriate action.

One commenter stated that the exemption procedures do not provide for carrier exemptions. The commenter requested that more general procedures be adopted for carrier exemptions because the application information differs from that required for shippers and packaging manufacturers. For consistency, RSPA utilizes the same exemption application procedure for all applicants (*e.g.,* packaging manufacturers, shippers, and carriers). In this final rule, RSPA is clarifying the types of information required of an exemption applicant (see preamble discussion under § 107.105). Additionally, RSPA is including language in the rule under the ''emergency processing'' provisions of § 107.117 which should assist carriers by directing an applicant to seek an emergency exemption through the modal office for the proposed initial mode of transportation.

One commenter strongly recommended that RSPA incorporate more exemptions into the HMR to allow industry more flexibility and reduce the number of exemptions. The commenter requested that RSPA explain the standards which it utilizes to determine which exemptions are incorporated into the HMR. The commenter stated that ''making this information [the standards which RSPA utilizes] public would provide a clearer picture of the need for a more flexible regulatory scheme and give a benchmark on which to assess efforts to incorporate existing exemptions.''

Although RSPA has no formal set of standards for selecting exemptions to be converted to regulations of general applicability, RSPA periodically reviews existing exemptions to prioritize them as to their suitability for conversion to regulations. Whether a specific exemption is a candidate for regulatory action depends on any number of factors, such as the expressed interest of the exemption holder or others, the suitability of the exemption for conversion, rulemaking activity in related areas, agency priorities, and whether the process, packaging or activity authorized by the exemption has provided a clearly demonstrated

level of safety equivalent to that which is provided by the HMR.

Another commenter recommended that RSPA automatically incorporate exemptions into the HMR after the second renewal of the exemption. RSPA agrees that if an exemption of general applicability demonstrates a level of safety equivalent to the HMR, the provisions of the exemption ultimately may be suitable for incorporation into the HMR. However, RSPA is not adopting the commenter's recommendation. As previously discussed, a number of factors influence whether an exemption is proposed for conversion to a regulation.

§ 107.105 Application for exemption. Commenters supported RSPA's proposal to require that applicants submit exemption applications in duplicate, rather than triplicate. Commenters stated that this amendment would reduce the burden on applicants, and RSPA is adopting the requirement as proposed.

One commenter requested that applicants be required to submit the application information in numerical order consistent with the application procedures so that RSPA can quickly determine if any information is missing. While RSPA encourages applicants to follow the format utilized in the rule when submitting application materials, RSPA believes that its personnel can expeditiously determine the completeness of an application. Further, RSPA does not want to place another requirement on applicants; therefore, RSPA recommends but is not mandating use of this commenter's suggestion.

Another commenter suggested that proposed § 107.105 (a)(2) and (a)(4) be combined. Proposed paragraph (a)(2) requires that an applicant who is not an individual (i.e., the applicant is a corporation, partnership, or the like) designate an agent pursuant to the laws of the United States. Proposed paragraph (a)(4), however, requires a foreign applicant to designate an agent within the United States. This paragraph applies to both individuals and legal entities. To avoid confusion between an agent for a U.S. applicant that is not an individual and an agent for a foreign applicant, RSPA is keeping the two requirements as separate paragraphs (a)(2) and (a)(3), respectively, in this final rule.

One commenter suggested that RSPA require applicants to provide a Material Safety Data Sheet (MSDS) or emergency response information for hazardous materials in an application to confirm that this information is consistent with the Emergency Response Guidebook. RSPA agrees that an MSDS may contain useful information, such as hazard properties of a commodity, for inclusion in an application and this information may be needed to justify an application. RSPA believes that an MSDS is not necessary in most instances and did not propose to require MSDS' or emergency response information with exemption applications. Therefore, RSPA is not adopting the commenter's suggestion.

Several commenters expressed concern regarding what they perceive as the increased quantity and detail of information required to be included in an exemption application. Some commenters stated that supplying this information would place an undue burden on applicants and make it more difficult or even impossible to obtain an exemption or approval. Without providing any supporting statistics or financial data, one commenter stated that trying to meet some of these requirements could substantially increase the paperwork burdens for both the applicant and RSPA, and the U.S. Department of Energy (DOE) stated that the new requirements would impose severe economic impacts on applicants who use contractors because the contractors would have to perform extensive analyses and compilation of information to satisfy the new requirements.

RSPA believes that the administrative burden on applicants remains unchanged under proposed § 107.105 and under the provisions adopted in this final rule. The information and analyses set forth in this final rule for exemption applications are essentially what is required under the Federal hazmat law and what RSPA historically has requested, often during the processing of the exemption. By clearly specifying this information in the regulations, RSPA hopes to minimize delays in application processing and requests for extra submissions from applicants occasioned by RSPA's having to obtain additional information from exemption applicants at a later time. Additionally, the commenters who raised these ''increased burden'' arguments have not submitted supporting documentation demonstrating that exemption applicants' paperwork or economic burdens will be increased by this regulatory change. Finally, RSPA notes that an applicant is not required to submit information which is inapplicable to the exemption request or which is impracticable for the applicant to obtain. Therefore, RSPA does not believe that paperwork and economic burdens upon an exemption applicant will increase, and is adopting the regulatory change essentially as proposed.

Several commenters requested that RSPA clarify certain information required in the proposed application procedures. Specifically, one commenter recommended that RSPA consolidate and clarify the information required in proposed paragraphs (a)(14) through (a)(18). Another commenter requested clarification of what is meant in proposed § 107.105(a)(16) by ''any increased risk to safety or property that may result if the exemption is granted.'' The commenter stated that RSPA needs to specify the extent of analysis an applicant is required to provide in the application. Another commenter requested that RSPA add language in proposed paragraphs (a)(16) and (a)(18) that applicants provide risks that ''are known or could reasonably have been expected to be known'' to clarify that a ''full-blown'' risk assessment is not intended by RSPA. Another commenter added that it is unclear whether an applicant is required to include the information in proposed paragraph (a)(18). The commenter requested that RSPA add some examples to clarify when the provision is required.

The Federal hazmat law requires each person seeking an exemption to provide a safety analysis that justifies the exemption (49 U.S.C. 5117(b)). The information required under § 107.105 is intended to elicit the information and analyses necessary to demonstrate that the requested exemption provides an equivalent level of safety to that afforded by the HMR or, if the HMR do not establish a level of safety, is consistent with the public interest and will adequately protect against risk to life and property.

The safety analyses required to support exemptions can vary greatly. The analyses may range from simple comparative analyses relied upon by an applicant seeking an exemption which will permit minor variations in packaging, to complex risk analyses for complex packaging systems involving new technologies or materials of construction. The risks presented by new technologies and materials are often more difficult to evaluate, and may require a more extensive safety analysis.

Successful shipping experience may be useful to support a safety analysis, but does not necessarily demonstrate that a particular package or transport practice provides a level of safety equivalent to that authorized. Successful shipping experience may only indicate that a package was not subjected to a drop, impact, or fire during transportation. A safety analysis

of a package or transport practice that includes exposure to normal and accident environments is a more valid indication of the level of safety provided by the package or transport practice, than simply looking to whether a history of incidents exists. Therefore, RSPA is requiring the applicant to describe all relevant shipping and incident experience of which the applicant is aware that relates to the application. The applicant also must specify safety control measures (e.g., use of a private carrier or additional packaging) necessary to demonstrate that the proposed package or transport practice meets a level of safety equivalent to that afforded by the HMR and is in the public interest. In response to commenters' requests, RSPA is clarifying the information specified in proposed paragraphs (a)(16) through (a)(18).

Several commenters stated that certain requested information may be unavailable to the applicant. One commenter stated that some of the requested information, such as service life and performance of an alternative packaging, constitutes reasons for the exemption—to find these answers by authorizing controlled shipments under an exemption. Commenters stated that the proposed changes facilitate the ability of the Associate Administrator to reject an application not deemed complete. One commenter stated that, if an applicant cannot identify a potential failure mode and its possibility of an occurrence, the application would be deemed incomplete and could be denied.

The proposed language of § 107.105 was intended to expedite processing of exemption applications for the benefit of persons seeking exemptions. RSPA acknowledges that not all information about a proposed alternative packaging or activity is available at the time an exemption is requested. However, an exemption is granted only when an applicant has provided sufficient information to demonstrate that the requested variation from the regulatory requirement will afford a level of safety equivalent to that which is provided by the HMR. This demonstration must include information relevant to the expected service, performance and limitations of the packaging.

Commenters also stated that certain information may not be applicable to some exemptions. For example, some commenters expressed concern that the requirement to provide detailed commodity information (proposed § 107.105(a)(12)) may not be necessary or appropriate for an exemption that authorizes manufacture of a packaging. The commenters stated that lack of this information could result in the rejection of the application. Commenters requested that § 107.105 be modified to indicate that such detailed information must be included in an application only when appropriate based on the nature of the exemption being sought. In response to commenters' concerns, RSPA is requiring the applicant to provide information in the application only when it is appropriate to demonstrate that the proposal meets the statutory and regulatory standards. Therefore, this final rule indicates that an applicant need only submit information that is relevant to an application.

Other commenters expressed opposition to RSPA's proposal to extend the recommended time period for filing an exemption application from 120 days to 180 days before the requested effective date of the exemption. The commenters indicated that this extended deadline appeared to be contrary to the stated purpose of the rule—reduction of the processing time of exemption applications and renewals. Another commenter requested that RSPA also issue or deny an exemption in the same time period when a properly prepared application is submitted. RSPA's proposal was intended to parallel the Federal hazmat law requirement, 49 U.S.C. 5117, that the Secretary of Transportation issue or renew an exemption for which an application was filed, or deny such issuance or renewal, within 180 days after the first day of the month following the date of the filing of such application. RSPA understands that many parties requesting exemptions cannot anticipate their needs beyond four months. Therefore, RSPA is addressing the needs of its customers by retaining the 120-day application filing time. However, RSPA notes that 120 days is often not enough time for processing an incomplete or very complicated exemption application, and encourages parties to file an application for an exemption as early as possible.

Another commenter objected to the proposal to limit the use of manufacturing exemptions to specific plants or locations. The commenter stated that many shippers are also manufacturers and use more than one vendor to supply a packaging. The commenter requested the flexibility to use alternative suppliers of its packaging. RSPA did not propose to limit the use of manufacturing exemptions to particular plants, but to require applicants to identify the location of each facility where an exemption would be used. It was RSPA's intention to limit the application and definition of a manufacturing exemption to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in the exemption packagings it produces (i.e., a business entity engaged in the manufacturing and marketing packagings for use by other entities). A person who manufacturers, marks and sells packagings under an exemption may do so at dozens of facilities without restriction; however, RSPA is retaining the requirement that applicants for manufacturing exemptions identify the location of each facility where manufacturing under an exemption will occur. The requirement does not apply to shippers who produce packagings for their own use.

Based on the foregoing, RSPA is revising the exemption application procedures essentially as proposed with modifications as described above, reformatting of the section and revising of certain provisions to make them less burdensome.

§ 107.107 Application for party status. This section is adopted essentially as proposed. Paragraph (a)(4) is revised to delete an information requirement pertaining to consent to U.S. jurisdiction. Paragraph (c) is revised to reference § 107.113 (e) and (f) for the manner by which the Associate Administrator grants or denies applications.

§ 107.109 Application for renewal. This section is adopted essentially as proposed. One commenter requested that one renewal application suffice for all parties to an exemption. A single renewal application would not provide all incident experience encountered by all parties to an exemption. Further, where there are numerous parties to an exemption and each attained party status on a different date, issuance of a blanket renewal for all parties becomes unworkable from a timing perspective. For example, persons who attained party status close to the date for the blanket renewal may find themselves immediately faced with renewal. RSPA, therefore, is not adopting this suggestion.

One commenter encouraged RSPA to extend the exemption renewal process from two years to five years to alleviate some of the administrative burdens on RSPA and the regulated industry. The commenter stated that RSPA could determine whether an exemption should continue based on any incidents that occur during the life of the exemption. Another commenter stated that an exemption period of three years may be more appropriate for the information required in the revised application procedures. Another

commenter suggested that RSPA seek a legislative change that allows exemptions to remain in effect until such time as the Secretary finds that continuation is no longer in the public interest or the exemption holder withdraws the exemption. The Federal hazardous materials transportation law (49 U.S.C. 5117) currently provides that an exemption can be issued for no more than a two-year maximum period of time; therefore, RSPA lacks statutory authority to extend the two-year period. However, on March 27, 1996, a legislative proposal was sent to Congress which included a request that the two-year exemption limitation be extended to four years.

§ 107.111 Withdrawal. One commenter requested that RSPA clarify that all documents deemed confidential by the Associate Administrator in accordance with § 107.5 that are related to an active or inactive application will remain confidential. RSPA accepts the commenter's suggestion and is adding a statement in this section clarifying this point and further clarifying that the time period for which confidential treatment will be afforded comports with the guidelines of the Freedom of Information Act (5 U.S.C. 552(b)). Specifically, submissions which fall within the definition of ''trade secrets'' or ''commercial or financial information obtained from a person and privileged or confidential'' will remain confidential indefinitely, unless the party requesting the confidential treatment notifies the Associate Administrator that the confidential treatment is no longer desired.

§ 107.113 Application processing. Commenters raised concerns about the proposed language in paragraph (a) with respect to the time frame in which a determination is made concerning whether an application is complete. The commenters requested that RSPA remove the proposed wording ''usually is made'' and retain the current wording ''will be made.'' One commenter stated that the requirement is reasonable since it is only a determination of the application's completeness and not a decision on its merits. RSPA agrees with the commenter and is retaining the current wording in paragraph (a) as requested.

Seven of the 15 commenters were strongly opposed to RSPA's proposal to consider the existence of pending or completed enforcement actions as a factor in determining whether an exemption applicant demonstrates fitness to conduct an activity that would be authorized under the exemption. One commenter stated that RSPA's technical experts should be able to determine the safety of the subject of a proposed exemption request without reference to enforcement actions on unrelated subjects. Another commenter stated that, historically, RSPA could deny an exemption application on any basis. The commenter stated that the proposed language could create an unnecessarily adversarial situation. One commenter stated that it objected to consideration of pending or completed enforcement actions as ''*prima facie* evidence of an applicant's capability or integrity.'' The commenter stated that, in cases where assessed penalties were low, respondents in enforcement actions may have adopted a ''no contest'' posture in an enforcement action and paid a penalty, rather than expend the time and money necessary to litigate an action. If enforcement history is used against these respondents, the commenter said that a business decision to not contest the action would have more severe consequences than successful resistance to an enforcement action by a more litigious respondent. The commenter also stated that denial of an exemption or approval because of enforcement history would punish the violator twice for a violation. The commenter added that Congress, in developing the hazardous materials transportation legislation, had considered and rejected adoption of a licensing concept because existing enforcement powers are sufficiently strong to address violations, without denying authority to operate under an exemption or approval. The commenter concluded that the ''enforcement history'' provision should be very narrowly tailored: only prior violations which indicate flagrant disregard for HMR compliance should be considered. Another commenter suggested that only enforcement actions of a ''significant nature'' be considered evidence of insufficient competence or integrity.

In general, RSPA believes that consideration of completed enforcement actions and certain pending enforcement actions as evidence of an applicant's capability and integrity is a legitimate means of protecting the public. It is not punishment but recognition of relevant information. Enforcement actions may be indicative of an applicant's ability or willingness to comply with the applicable regulations. Because the Associate Administrator is considering whether to authorize compliance with specific alternatives to the HMR, the likelihood of an applicant's compliance with those alternatives is relevant to public safety.

One commenter suggested that RSPA revise paragraph (a)(5) to read ''The application may be denied if the shipping and accident experience supplied by the applicant in accordance with § 107.105(a) which directly relates to the exemption being sought demonstrates that approval of the application poses a potential threat to life or property.'' Limiting consideration to only an applicant's shipping and accident experience which directly relates to the exemption sought fails to protect the public from applicants with poor compliance histories who seek exemptions to authorize new hazardous materials transportation activities.

One commenter stated that the rule is unclear as to whether violations that qualify for the ticketing program are considered ''enforcement actions'' under the proposed rule. The commenter recommended that RSPA not consider ticketed violations. RSPA will consider ticketed violations as part of an applicant's compliance history, using the criteria specified in § 107.331 to assess the weight to be given to the violation.

DOE requested clarification of the provision concerning consideration of past violations in determining an applicant's capability and integrity as it applies to government entities that use contractors. DOE also asked RSPA to clarify the terms ''pending'' and ''complete'' as used in the proposed regulation and the type of activity that warrants a determination of ''lack of integrity.''

For purposes of regulatory compliance, RSPA looks to the entity whose act or omission constitutes a violation of the HMR. In response to DOE's question regarding the status of an enforcement action as either ''pending'' or ''complete,'' an enforcement case historically has been initiated by issuance of a Notice of Probable Violation (NOPV). However, RSPA recently established a pilot ''ticketing'' program permitting initiation of an enforcement case by issuance of a ticket. Thus, a case is ''pending'' from the date of issuance of either the NOPV or the ticket until a final order has been issued and the time for appeal has expired. If the order has been appealed in a timely manner, the case is ''pending'' until the RSPA Administrator (Administrator) issues an Action on Appeal. When an order has become final or when an order was appealed and the Administrator has issued an Action on Appeal, the enforcement action is considered to be ''complete.''

RSPA is adopting the proposed rule with several modifications. In making a determination to grant or deny a request for an exemption, RSPA will consider information submitted in the

application package, compliance history of the applicant, and other information available to the Associate Administrator.

Another commenter objected to the proposed language providing that an applicant who failed to respond within 30 days to a request for additional information would have his or her application deemed incomplete and denied. The commenter stated that, where reasonable and appropriate, an extension of time should be granted. RSPA understands the commenter's concern. Currently, if an applicant fails to respond to a request for additional information for good cause, RSPA grants a 30-day extension. To clarify this point, RSPA is adding a provision in this section and § 107.709 (approval application processing) that allows an applicant to submit a written request for a 30-day extension.

Finally, commenters stated that, while they favored initiating a rulemaking in addition to issuing an exemption, they did not agree with initiating a rulemaking in lieu of issuing an exemption. The commenters stated that the latter penalized an applicant because rulemaking usually has taken longer than processing of an exemption request. One of the commenters noted that, in its experience, RSPA staff faced with this situation would issue an exemption to the applicant, and concurrently initiate a rulemaking action, which could lead ultimately to issuance of a rule of general applicability.

RSPA has seldom issued a rulemaking in lieu of processing an exemption application, and RSPA does not intend to change that policy. However, RSPA believes that if the subject of an exemption application is so broad and of such general applicability that it should result in a rulemaking action, going forward with issuance of the exemption during the pendency of the rulemaking process may have the effect of prejudging the rulemaking. A large number of applications for similar exemptions or ''party to'' status may also adversely impact RSPA's programs. For these reasons, the Associate Administrator may either process the exemption application, use the application as a basis for rulemaking, or do both. When an applicant meets all other regulatory requirements and demonstrates a compelling necessity for an exemption, the Associate Administrator may issue an exemption.

§ 107.115 Priority processing. Some commenters supported RSPA's proposal to establish a new priority processing category for applications that do not qualify for emergency processing but merit more expeditious consideration than routine processing. One commenter stated that overall processing time should be reduced. However, other commenters expressed concern that the processing time of routine and priority exemption applications would be the same if each must undergo the same review process as proposed. Some commenters opposed a priority processing category because it would delay the preparation and processing of applications for exemptions as each applicant tried to demonstrate significant economic loss and RSPA evaluated each application.

One commenter requested that RSPA provide an indication of the time in which RSPA would respond to a priority exemption application. Another commenter requested that RSPA provide the Associate Administrator the flexibility to issue temporary exemptions to applicants who qualify for priority processing while the application is being processed to minimize financial burdens on the applicant. Commenters stated that cases that have the potential for severe economic harm are already handled by emergency processing.

Another commenter requested that RSPA clarify why current emergency processing should be replaced by two separate processing categories that appear to be more complex. The commenter noted that, in the NPRM, priority processing would be based on economic factors and emergency processing would be based on life and property criteria. The commenter stated that, in the current emergency processing procedures, RSPA considers either endangerment to life or property or serious economic loss. The commenter asked whether RSPA, by proposing two separate processing categories, is suggesting that it considers a health threat to be more important than economic loss, even if the health threat is remote and the economic loss is substantial.

One commenter objected to the proposed rule requiring non-government entities to meet higher standards than government entities to qualify for priority processing. Based on the comments, RSPA has determined that adding a priority processing category is not warranted. Therefore, the proposal is not adopted in this final rule.

§ 107.117 Emergency processing. Commenters favored the continued existence of an emergency processing category. One commenter stated that the current procedures require that ''an applicant need only show that existing conditions necessitate the transportation of a hazardous material, or that the protection of life and property would not be possible if such material is not transported.'' The commenter objected to the proposed emergency processing procedures in that they require applicants to demonstrate that such processing is necessary to prevent ''significant injury'' to persons or property. The commenter requested that RSPA remove the term ''significant'' because it is subjective. The current procedures allow only applicants who can show that a life-threatening situation exists to qualify for emergency processing. In the proposed rule, RSPA responded to requests of applicants that a broader standard be utilized in determining that emergency processing is warranted. At the same time, RSPA proposed to include the term ''significant'' to set a reasonable limit on the expanded criteria, and believes that the term is necessary to ensure fairness to applicants awaiting routine processing by not allowing applicants to allege ''minor'' injuries or losses as the basis for emergency processing.

One commenter stated that, under the proposed rule, the Associate Administrator could deny priority or emergency processing if timely application could have been made. The commenter requested that RSPA allow an applicant to explain circumstances that may have contributed to the applicant not filing an application in a timely manner so that the applicant may still be considered for priority or emergency processing. RSPA contemplates that an applicant seeking emergency processing will provide evidence of circumstances that prevented the applicant from filing the application in a timely manner.

One commenter stated that it is unlikely that applicants who request emergency processing will be able to supply the information specified in proposed § 107.105(a)(17) for analyses, data, or test results. In response to comments to the proposed application procedures in § 107.105, RSPA is clarifying the extent to which applicants are required to supply analyses, data, or test results. See preamble discussion under § 107.105.

Another commenter stated that the ''emergency processing'' language appeared to apply only to ''carrier'' exemptions and questioned its applicability to exemptions issued to shippers. The commenter stated that the proposed rule directs carriers to send the exemption application to the office of the modal administration which has oversight responsibility for the carrier's mode of transportation (e.g., FHWA, the Federal Railroad Administration, etc.).

The commenter stated that shippers often utilize more than one mode and therefore the proposed requirement that an application be sent to only one modal office requires ''fine tuning.'' Any applicant, including a shipper, seeking an emergency exemption must submit the application to the specified modal contact official for the *initial* mode of transportation to be utilized.

Some commenters suggested that emergency exemption applications be submitted directly to RSPA, consistent with other exemption submissions, and not to the specific modal administration. An emergency exemption application is most expeditiously handled when submitted to the applicable modal administration, where an immediate analysis of the proposed transportation can be performed by personnel having expertise in the affected mode of transportation. This process will eliminate the need for RSPA to forward the exemption application to the affected mode for input, thus allowing for more expeditious application review and more timely and efficient customer service.

In this final rule the section is adopted essentially as proposed with editorial changes for clarity. Proposed paragraph (f) is deleted as unnecessary, and proposed paragraph (g) and (h) are redesignated as (f) and (g), respectively.

§ 107.121 Modification, suspension, or termination of exemption or grant of party status. One commenter expressed concern that the proposed rule would allow termination simply ''for no other reason than if the Department wants it terminated regardless of the shipping and incident experience * * *.'' The commenter argued that: (1) This provision appears contrary to the performance-oriented packaging system; (2) this provision gives no regard to contracts for the supply of materials between shippers and consignees; (3) the exemption holder is placed at the mercy of RSPA personnel; (4) it is doubtful that the proposed rule comported with the intent of Congress; (5) the proposed rule does not comport with the preamble, which indicates that the purpose of the NPRM is to expedite processing of applications and promote program consistency; and (6) based on the foregoing, the proposed rule is ''significant.''

This rule clarifies standards for exemption modification, suspension, and termination and gives the Associate Administrator more flexibility to determine which of the three remedies is appropriate in a given situation. Presently, the Associate Administrator may modify or suspend an exemption if its provisions are violated or if new information suggests that the activity under the exemption creates a risk to life or property. The Associate Administrator may terminate an exemption if it is no longer consistent with the public interest, is no longer necessary due to a change in the regulations, or was granted on the basis of false or misleading information. The ''public interest'' criterion encompasses all grounds on which the Associate Administrator may terminate an exemption, but it is vague. Furthermore, the sharp distinction that the existing regulation draws between those conditions that justify modifying or suspending an exemption and those that justify terminating it handicap the Associate Administrator in taking the action that is most appropriate in a particular circumstance. For example, the current regulation may require the termination of an exemption when modification would suffice.

The Associate Administrator's decision to modify, suspend, or terminate an exemption must be based on the criteria specified in the proposed regulatory text (see 49 CFR 107.121 (a) and (b)).

In this final rule § 107.121 is adopted essentially as proposed. Paragraph (d) is added to specify conditions by which the Associate Administrator may declare a proposed action immediately effective.

§ 107.123 Reconsideration. One commenter suggested that RSPA clarify that applications denied pursuant to § 107.113(d) are eligible for reconsideration in accordance with this section. RSPA agrees that they are eligible for reconsideration, but sees no reason for a rule change. In the NPRM, RSPA specifically stated that applicants may request reconsideration of decisions made under §§ 107.113(g), 107.117(e), and 107.121(c). This section is adopted as proposed.

Subpart C—Preemption

One commenter suggested that ''Associate Administrator for Hazardous Materials Safety'' be revised to read ''Associate Administrator'' for consistency with other sections in part 107. RSPA agrees and, in the interest of achieving consistency, is modifying the language of subpart C as suggested in all general references to the Associate Administrator. Also, RSPA is making other minor modifications to the regulatory language of subpart C for clarity and consistency.

§ 107.205 Notice. One commenter recommended changing ''may publish notice of an application'' in paragraph (b), to ''will publish notice of, including an opportunity to comment on, an application.'' RSPA agrees and is revising the paragraph to require publication of the notice in the Federal Register.

In paragraph (c) and in §§ 107.211(c), 107.217(c), and 107.223(c), RSPA is adding a sentence, ''Late-filed comments are considered so far as practicable.'' This sentence reflects the manner in which RSPA has handled late-filed comments in preemption matters and is consistent with § 106.23 concerning the handling of late-filed comments in rulemaking actions. Because this change is merely a modification to a rule of agency procedure, public notice and an opportunity to comment on the change are not mandated by the Administrative Procedure Act.

§ 107.209 Determination. Commenters also favored revision of paragraph (c) to change ''may publish'' to ''will publish''. RSPA agrees and is making this change.

One commenter disagreed with the proposed deletion of paragraph (b) to eliminate the Associate Administrator's authority to issue a preemption determination on his or her own initiative. The commenter did not agree that the authority was eliminated by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The commenter recommended adding language allowing the Associate Administrator to issue a preemption determination where he or she is directly affected by a requirement of a State or political subdivision or Indian tribe. RSPA disagrees. The pre-HMTUSA regulations authorized RSPA to issue inconsistency rulings, which were merely advisory in nature, on its own initiative. However, in enacting HMTUSA, Congress replaced these advisory inconsistency rulings with authorization to issue binding preemption determinations and, further, provided for issuance of preemption determinations only in response to applications by ''directly affected'' persons. See 49 U.S.C. 5125(d). In light of these statutory changes, RSPA believes that it is inappropriate for the Associate Administrator to initiate a preemption determination proceeding on his or her own initiative. Therefore, paragraph (b) is eliminated as proposed.

§ 107.211 Petition for reconsideration. RSPA proposed to amend this section by revising paragraph (a) to read ''The petition must be filed within 20 days of publication of the determination in the Federal Register.'' A commenter expressed concern about this language in light of RSPA's proposal to make publication

optional. As previously stated, RSPA will publish all preemption determinations and, therefore, this language will not be problematic. The proposal is adopted in this final rule.

§ 107.213 Judicial review. In the NPRM, RSPA proposed to add a new section to allow a party to a proceeding under § 107.203(a) to seek review by the appropriate district court of the United States of a decision of the Administrator by filing a petition with the court within 60 days after the Administrator's decision becomes final. One commenter recommended that references to the ''Administrator'' be changed to the ''Associate Administrator.'' RSPA agrees with this suggestion and amends this section accordingly. The commenter also requested that RSPA specify when its decision on a petition for reconsideration of a preemption determination becomes final. The Associate Administrator's decision becomes final when it is published in the Federal Register. RSPA is amending this section to clarify this issue. In addition, RSPA is revising the wording ''decision'' to read ''determination'' to minimize confusion.

§ 107.217 Notice. One commenter suggested that the word ''ruling'' in paragraph (d) be changed to ''outcome of a determination on the application.'' RSPA agrees with this suggestion, and is making the change accordingly.

§ 107.221 Determination. A commenter asked that, in paragraph (d), the word ''may'' be changed to ''will'' concerning publication of determinations in the Federal Register. RSPA agrees and is making this change.

§ 107.223 Petition for reconsideration. One commenter suggested that the term ''order'' be changed to ''determination.'' For clarity and consistency, RSPA is making this change.

§ 107.227 Judicial review. RSPA is amending this section for consistency with § 107.213. See preamble discussion under § 107.213.

Subpart D—Enforcement

§ 107.305 Investigations. A commenter opposed the proposal to authorize RSPA inspectors to issue subpoenas for the production of documents or other tangible evidence because of the potential for abuse. RSPA is adopting the provision as proposed. RSPA inspectors are broadly empowered, through delegations of investigatory authority under the Federal hazmat law, 49 U.S.C. 5121, to collect evidence reasonably related to hazardous materials compliance inspections. Their use of a subpoena without involvement of RSPA's Office of the Chief Counsel will improve program efficiency by expediting the information-gathering process. The potential for inspectors to abuse this authority is minimal because the Director of the Office of Hazardous Materials Enforcement must approve the issuance of the subpoena and the recipient of the subpoena may seek review of the subpoena by RSPA's Office of the Chief Counsel under § 107.13(h).

For clarity, RSPA added the words 'also known as ''hazmat inspectors'' or ''inspectors''' after the words ''Hazardous Materials Enforcement Specialists.'' This addition was not proposed in the NPRM, but is added on RSPA's initiative to provide consistency between § 107.305(b) and subparagraphs (1), (2), and (3) which refer to ''inspectors.''

§ 107.315 Admission of violations. Paragraphs (c) and (d) are revised to delete the recommendation that payment of a civil penalty be documented by forwarding a photocopy of the respondent's electronic fund transfer receipt or check to the Office of the Chief Counsel. This administrative change, not in the NPRM, eliminates a potential paperwork burden on the regulated industry. Because this change is merely a modification to a rule of agency procedure, public notice and opportunity to comment on the change are not required by the Administrative Procedure Act.

§ 107.331 Assessment considerations. This section is adopted essentially as proposed, with a minor editorial revision.

Subpart H—Approvals, Registrations and Submissions.

§ 107.107 Purpose and scope. This section is adopted as proposed.

§ 107.705 Registration and reporting. One commenter recommended that RSPA develop a standard form in place of general procedures for registrations and reports. RSPA does not believe that a standard form is practical, considering the variation in information required for the numerous approvals, registrations, and reports that would have to be accommodated by a standard generic form.

Except as discussed in the following paragraph, this section is adopted as proposed.

§ 107.707 Applications. The proposed provisions for renewal of approvals state that RSPA will issue a written extension to operate under an expired approval until RSPA makes a final determination on the application. One commenter requested that the renewal procedures for approvals be consistent with renewal procedures for exemptions in that if an application is submitted at least 60 days prior to the expiration date, the expiration is automatically extended until RSPA makes a final determination on the application. RSPA agrees with the commenter, and is adopting the suggestion. Further, since the requirements for registration and reporting specified in the proposed § 107.705 and the requirements for an approval application specified in § 107.707 are essentially the same, RSPA is eliminating the separate language of § 107.707, and combining the ''registration and reporting'' requirements of § 107.707 with the ''approval application'' requirements § 107.705, in a section entitled ''Registrations, reports, and applications for approval.''

§ 107.709 Application processing. Commenters again expressed opposition to RSPA's proposal to permit the Associate Administrator to consider pending or completed enforcement actions in determining whether an approval application is processed or denied. This issue is discussed under § 107.113 and RSPA is modifying this section similarly.

§ 107.711 Withdrawal. With respect to documents submitted in conjunction with an exemption application which is later withdrawn, one commenter requested that RSPA clarify that all documents deemed confidential by the Associate Administrator in accordance with § 107.5 that are related to an active or inactive application will remain confidential. RSPA has agreed to do so, and is extending this confidential treatment to documents submitted in conjunction with an approval application. See preamble comments to 49 CFR § 107.111.

§ 107.713 Approval modification, suspension, or termination. One commenter raised the same concerns about the proposed procedures for modification, suspension, or termination of approvals as he raised regarding modification, suspension, or termination of exemptions. RSPA discussed these issues under § 107.121. Paragraph (d) is added to specify conditions by which the Associate Administrator may declare a proposed action immediately effective. Otherwise, the section is adopted as proposed.

§ 107.715 Reconsideration. Paragraph (b) is adopted as proposed.

§ 107.717 Appeal. Proposed paragraph (c) is not adopted for the same reasons as discussed under § 107.715 above. Otherwise, the section is adopted as proposed.

Part 171

§ 171.1 Purpose and scope. One commenter recommended that the wording ''in commerce'' be added following ''hazardous materials'' throughout this section for clarity and consistency with the Federal hazardous material transportation law. RSPA agrees and is modifying paragraph (a) accordingly.

Additionally, a new paragraph (d) is added, as proposed, to clarify that the requirements of subchapter C are applicable to the use of terms and symbols prescribed in this subchapter for marking, labeling, placarding, and describing hazardous materials and packagings used in their transport.

§ 171.2 General requirements. The modifications of paragraphs (a) through (d), and the addition of paragraph (h) are adopted essentially as proposed in the NPRM, with minor modifications to the regulatory language for accuracy and clarity. Identifications listed in paragraph (d) have been expanded to include most, if not all, of the identifications covered by the regulations.

§ 171.3 Hazardous waste. A commenter objected to RSPA's proposal to eliminate paragraph (c) of this section; the commenter opined that the paragraph implements a requirement of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6923(b), that all RCRA rules issued by the Environmental Protection Agency be consistent with the Federal hazmat law and the HMR. The commenter also stated that retention of this provision is necessary to inform states implementing RCRA of the necessity for consistency with the Federal hazmat law and the HMR. For preemption purposes, RSPA looks at hazardous waste issues together with issues covering all other hazardous materials. RCRA's directive that EPA's hazardous waste requirements be consistent with the Federal hazmat law does not mandate that RSPA establish a separate preemption provision for hazardous waste. Therefore, RSPA is deleting paragraph (c), including the note contained therein, as proposed.

§ 171.8 Definitions. RSPA is adopting a definition for ''approval'' and revising the definition for ''person'', as proposed. In addition, RSPA is adding a definition for ''exemption'' for clarity. Because this latter change is merely informative, public notice and opportunity to comment on the change are not required by the Administrative Procedure Act.

Part 172

§ 172.302 General marking requirements for bulk packagings. A commenter requested that RSPA authorize markings for small portable tanks and intermediate bulk containers (IBC's) to be only one inch high. The commenter suggested that, instead of incorporating the minimum height of exemption number markings into § 172.302(c), RSPA should cross-reference § 172.302(b), which requires exemption markings to be the same size as other required markings on bulk packagings and makes the marking size dependent upon the size and capacity of the packaging. The commenter also requested that width requirements for exemption markings be specified. RSPA is considering changes to the marking height and width requirements under a separate rulemaking action. Therefore, the proposed change in the NPRM and this commenter's suggested change regarding size of exemption markings are not adopted as part of this final rule.

Part 173

§ 173.22a Use of packagings authorized under exemptions. Proposed paragraph (c) is revised to refer to ''offeror'' rather than ''shipper.'' Also, a sentence is added to clarify that a carrier shall maintain a copy of an exemption in the same manner as for a shipping paper.

Part 178

§ 178.3 *Marking of packagings.* Paragraph (d) is adopted as proposed.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not result in any additional costs to persons subject to the HMR. Therefore, preparation of a regulatory impact analysis or regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for this final rule is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a Federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule amends existing requirements and adds new procedural provisions to clarify existing practice. The amendments contained in this rule do not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

Information collection requirements applicable to applications for exemptions contained in this final rule are unchanged in substance and amount of burden from those currently approved by the Office of Management and Budget (OMB) under OMB control number 2137–0051. RSPA is requesting revision of the OMB approval to update section references in accordance with changes made in this final rule. Information collection requirements applicable to approvals are unchanged in substance and amount of burden from those previously approved under OMB control number 2137–0557. RSPA is requesting reinstatement and revision of this approval from OMB and will

display, through publication in the Federal Register, the control number when it is approved by OMB. Public comment on this request has been invited through publication of a Federal Register notice on March 5, 1996 (61 FR 8706). Under the Paperwork Reduction Act of 1995, no person is required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

E. Regulation Identification Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1–2. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

3. In § 107.3, definitions are added in alphabetical order to read as follows:

§ 107.3 Definitions.

* * * * *

Acting knowingly means acting or failing to act while

(1) Having actual knowledge of the facts giving rise to the violation, or

(2) Having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had.

Administrator means the Administrator, Research and Special Programs Administration.

Applicant means the person in whose name an exemption, approval, registration, a renewed or modified exemption or approval, or party status to an exemption is requested to be issued.

Application means a request under subpart B of this part for an exemption, a renewal or modification of an exemption, party status to an exemption, or a request under subpart H of this part for an approval, or renewal or modification of an approval.

Approval means a written authorization, including a competent authority approval, from the Associate Administrator to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter.

* * * * *

Associate Administrator means the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

* * * * *

Competent Authority Approval means an approval by the competent authority which is required under the provisions of an international standard, such as the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air or the International Maritime Dangerous Goods Code. To the extent that it satisfies the requirement of the international standard, any of the following may serve as a competent authority approval: a specific regulation of this subchapter or subchapter C of this chapter, an exemption or approval issued under the provisions of this subchapter or subchapter C of this chapter, or a separate document issued to one or more persons by the Associate Administrator.

Exemption means a document issued under the authority of 49 U.S.C. 5117 by the Associate Administrator that authorizes a person to perform a function that is not otherwise authorized under this subchapter, subchapter C, or other regulations issued under 49 U.S.C. 5101–5127 (e.g., Federal Highway Administration routing).

* * * * *

Filed means received at the Research and Special Programs Administration office designated in the applicable provision or, if no office is specified, at the Office of Hazardous Materials Exemptions and Approvals (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street SW., Washington DC, 20590–0001.

Holder means the person in whose name an exemption or approval has been issued.

* * * * *

Incident means an event resulting in the unintended and unanticipated release of a hazardous material or an event meeting incident reporting requirements in § 171.15 or § 171.16 of this chapter.

* * * * *

Investigation includes investigations authorized under 49 U.S.C. 5121 and inspections authorized under 49 U.S.C. 5118 and 5121.

Manufacturing exemption means an exemption from compliance with specified requirements that otherwise must be met before representing, marking, certifying (including requalifying, inspecting, and testing), selling or offering a packaging or container as meeting the requirements of subchapter C of this chapter governing its use in the transportation in commerce of a hazardous material. A manufacturing exemption is an exemption issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the exemption.

Party means a person, other than a holder, authorized to act under the terms of an exemption.

* * * * *

Registration means a written acknowledgment from the Associate Administrator that a registrant is authorized to perform a function for which registration is required under subchapter C of this chapter (e.g., registration with RSPA as a cylinder retester pursuant to 49 CFR 173.34(e)(1), or registration in accordance with 49 CFR 178.503 regarding marking of packagings). For purposes of subparts A through E, ''registration'' does not include registration under subpart F or G of this part.

Report means information, other than an application, registration or part thereof, required to be submitted to the Associate Administrator pursuant to this subchapter, subchapter B or subchapter C of this chapter.

* * * * *

4. In § 107.5, paragraph (a) is revised to read as follows:

§ 107.5 Request for confidential treatment.

(a) If any person filing a document with the Associate Administrator claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if that person requests the Associate Administrator not to disclose the information, that person shall file, together with the document, a second copy of the document with the confidential information deleted. The person shall indicate each page of the original document that is confidential or contains confidential information by marking or stamping ''confidential'' on each page for which a claim of confidentiality is made, and may file a statement specifying the justification for the claim of confidentiality. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, that person shall include a statement as to why the information is privileged or confidential. If the person filing a document does not mark or stamp a document as confidential or submit a second copy of the document with the confidential information deleted, the Associate Administrator may assume that there is no objection to public disclosure of the document in its entirety.

* * * * *

§ 107.5 [Amended]

5. In addition, in § 107.5, in paragraph (b), the phrase ''Associate Administrator for Hazardous Materials Safety'' is revised to read ''Associate Administrator'' both places it appears.

6. Subpart B of part 107 is revised to read as follows:

Subpart B—Exemptions

Subpart B—Exemptions

* * * * *

§ 107.101 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of exemptions from requirements of this subchapter, subchapter C of this chapter, or regulations issued under chapter 51 of 49 U.S.C.

§ 107.105 Application for exemption.

(a) *General.* Each application for an exemption or modification of an exemption must—

(1) Be submitted in duplicate and, for timely consideration, at least 120 days before the requested effective date to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) State the name, street and mailing addresses, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) If the applicant is not a resident of the United States, a designation of agent for service in accordance with § 107.7 of this part; and

(4) For a manufacturing exemption, a statement of the name and street address of each facility where manufacturing under the exemption will occur.

(b) *Confidential treatment.* To request confidential treatment for information contained in the application, the applicant shall comply with § 107.5(a).

(c) *Description of exemption proposal.* The application must include the following information that is relevant to the exemption proposal:

(1) A citation of the specific regulation from which the applicant seeks relief;

(2) Specification of the proposed mode or modes of transportation;

(3) A detailed description of the proposed exemption (e.g., alternative packaging, test, procedure or activity) including, as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents;

(4) A specification of the proposed duration or schedule of events for which the exemption is sought;

(5) A statement outlining the applicant's basis for seeking relief from compliance with the specified regulations and, if the exemption is requested for a fixed period, a description of how compliance will be achieved at the end of that period;

(6) If the applicant seeks emergency processing specified in § 107.117, a statement of supporting facts and reasons;

(7) Identification and description of the hazardous materials planned for transportation under the exemption;

(8) Description of each packaging, including specification or exemption number, as applicable, to be used in conjunction with the requested exemption;

(9) For alternative packagings, documentation of quality assurance controls, package design, manufacture, performance test criteria, in-service performance and service-life limitations;

(d) *Justification of exemption proposal.* The application must demonstrate that an exemption achieves a level of safety at least equal to that required by regulation, or if a required safety level does not exist, is consistent with the public interest. At a minimum, the application must provide the following:

(1) Information describing all relevant shipping and incident experience of which the applicant is aware that relates to the application;

(2) A statement identifying any increased risk to safety or property that may result if the exemption is granted, and a description of the measures to be taken to address that risk; and

(3) Either—

(i) Substantiation, with applicable analyses, data or test results, that the proposed alternative will achieve a level of safety that is at least equal to that required by the regulation from which the exemption is sought; or

(ii) If the regulations do not establish a level of safety, an analysis that identifies each hazard, potential failure mode and the probability of its occurrence, and how the risks associated with each hazard and failure mode are controlled for the duration of an activity or life-cycle of a packaging.

§ 107.107 Application for party status.

(a) Any person eligible to apply for an exemption may apply to be made party to an application or an existing exemption, other than a manufacturing exemption.

(b) Each application filed under this section must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) Identify by number the exemption application or exemption to which the applicant seeks to become a party;

(3) State the name, street and mailing addresses, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, and telephone number of an individual designated as the applicant's agent for all purposes related to the application; and

(4) If the applicant is not a resident of the United States, provide a designation of agent for service in accordance with § 107.7.

(c) The Associate Administrator grants or denies an application for party status in the manner specified in § 107.113(e) and (f) of this subpart.

(d) A party to an exemption is subject to all terms of that exemption, including the expiration date. If a party to an exemption wishes to renew party status, the exemption renewal procedures set forth in § 107.109 apply.

§ 107.109 Application for renewal.

(a) Each application for renewal of an exemption or party status to an exemption must—

(1) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001. Attention: Exemptions, DHM–31;

(2) Identify by number the exemption for which renewal is requested;

(3) State the name, street and mailing addresses, and telephone number of the applicant; if the applicant is not an individual, state the name, street and mailing addresses, and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the exemption since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant shall so certify. When known to the applicant, the statement should indicate the approximate number of shipments made or packages shipped, as the case may be, and number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C.

(b) If at least 60 days before an existing exemption expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the exemption will not expire until final administrative action on the application for renewal has been taken.

§ 107.111 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the RSPA dockets or files. Applications that are eligible for confidential treatment under § 107.5 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

§ 107.113 Application processing and evaluation.

(a) The Associate Administrator reviews an application for exemption, modification of exemption, party to exemption, or renewal of an exemption to determine if it is complete and conforms with the requirements of this subpart. This determination will be made within 30 days of receipt of the application for exemption, modification of exemption, or party to exemption, and within 15 days of receipt of an application for renewal of an exemption. If an application is determined to be incomplete, the applicant is informed of the reasons.

(b) An application, other than a renewal, party to, or emergency exemption application, that is determined to be complete is docketed. Notice of the application is published in the Federal Register, and an opportunity for public comment is provided. All comments received during the comment period are considered before final action is taken on the application.

(c) No public hearing or other formal proceeding is required under this subpart before the disposition of an application. Unless emergency processing under § 107.117 is requested and granted, applications are usually processed in the order in which they are filed.

(d) During the processing and evaluation of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(e) The Associate Administrator may grant or deny an application, in whole or in part. In the Associate Administrator's discretion, an application may be granted subject to provisions that are appropriate to protect health, safety or property. The Associate Administrator may impose additional provisions not specified in the application or remove conditions in the application that are unnecessary.

(f) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed alternative will achieve a level of safety that:

(i) Is at least equal to that required by the regulation from which the exemption is sought, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the exemption. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(g) An applicant is notified in writing whether the application is granted or denied. A denial contains a brief statement of reasons.

(h) An exemption and any renewal thereof terminates according to its terms or, if not otherwise specified, two years after the date of issuance. A grant of party status to an exemption, unless otherwise stated, terminates on the date that the exemption expires.

(i) The Associate Administrator, on determining that an application

concerns a matter of general applicability and future effect and should be the subject of rulemaking, may initiate rulemaking under part 106 of this chapter in addition to or instead of acting on the application.

(j) The Associate Administrator publishes in the Federal Register a list of all exemption grants, denials, and modifications and all exemption applications withdrawn under this section.

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that—

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis; or

(2) Emergency processing is necessary for immediate national security purposes or to prevent significant economic loss that could not be prevented if the application were processed on a routine basis.

(b) Where the significant economic loss is to the applicant, or to a party in a contractual relationship to the applicant with respect to the activity to be undertaken, the Associate Administrator may deny emergency processing if timely application could have been made.

(c) A request for emergency processing on the basis of potential economic loss must reasonably describe and estimate the potential loss.

(d) An application submitted under this section must conform to § 107.105 to the extent that the receiving U.S. Department of Transportation official deems necessary to process the application. An application on an emergency basis must be submitted to the U.S. Department of Transportation modal contact official for the initial mode of transportation to be utilized, as follows:

(1) *Certificate-Holding Aircraft:* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate or that is responsible for the aircraft operator's overall aviation security program. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(2) *Noncertificate-Holding Aircraft (Those Which Operate Under 14 CFR Part 91):* The Federal Aviation Administration Civil Aviation Security Office that serves the place where the flight will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer, 202–267–3333 (any hour).

(3) *Motor Vehicle Transportation:* Director, Office of Motor Carrier Research and Standards, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–366–4001 (day); 202–267–2100 (night).

(4) *Rail Transportation:* Staff Director, Hazardous Materials Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of Transportation, Washington, DC 20590–0001, 202–366–0509 or 366–0523 (day); 202–267–2100 (night).

(5) *Water Transportation:* Chief, Hazardous Materials Standards Branch, Operating and Environmental Standards Division, United States Coast Guard, U.S. Department of Transportation, Washington, DC 20593–0001, 202–267–1577 (day); 202–267–2100 (night).

(e) On receipt of all information necessary to process the application, the receiving Department of Transportation official transmits to the Associate Administrator, by the most rapid available means of communication, an evaluation as to whether an emergency exists under § 107.117(a) and, if appropriate, recommendations as to the conditions to be included in the exemption. If the Associate Administrator determines that an emergency exists under § 107.117(a) and that, with reference to the criteria of § 107.113(f), granting of the application is in the public interest, the Associate Administrator grants the application subject to such terms as necessary and immediately notifies the applicant. If the Associate Administrator determines that an emergency does not exist or that granting of the application is not in the public interest, the applicant immediately is so notified.

(f) A determination that an emergency does not exist is not subject to reconsideration under § 107.123 of this part.

(g) Within 90 days following issuance of an emergency exemption, the Associate Administrator will publish, in the Federal Register, a notice of issuance with a statement of the basis for the finding of emergency and the scope and duration of the exemption.

§ 107.121 Modification, suspension or termination of exemption or grant of party status.

(a) The Associate Administrator may modify an exemption or grant of party status on finding that—

(1) Modification is necessary so that an exemption reflects current statutes and regulations; or

(2) Modification is required by changed circumstances to meet the standards of § 107.113(f).

(b) The Associate Administrator may modify, suspend or terminate an exemption or grant of party status, as appropriate, on finding that—

(1) Because of a change in circumstances, the exemption or party status no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the exemption or party status would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder or party knowingly has violated the terms of the exemption or an applicable requirement of this chapter, in a manner demonstrating the holder or party is not fit to conduct the activity authorized by the exemption.

(c) Except as provided in paragraph (d) of this section, before an exemption or grant of party status is modified, suspended or terminated, the Associate Administrator notifies the holder or party in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder or party may file a written response that shows cause why the proposed action should not be taken within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder or party in writing of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

§ 107.123 Reconsideration.

(a) An applicant for exemption, an exemption holder, or an applicant for party status to an exemption may request that the Associate Administrator reconsider a decision under § 107.113(g), § 107.117(e) or § 107.121(c) of this part. The request must—

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision. If necessary to avoid a risk of significant harm to persons or property, the Associate Administrator may, in the notification, declare the action immediately effective.

§ 107.125 Appeal.

(a) A person who requested reconsideration under § 107.123 and is denied the relief requested may appeal to the Administrator. The appeal must—

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision. The Administrator's decision is the final administrative action.

§ 107.127 Availability of documents for public inspection.

(a) Documents related to an application under this subpart, including the application itself, are available for public inspection, except as specified in paragraph (b) of this section, at the Office of the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Dockets Unit, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001, Room 8421. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except holidays when the office is closed. Copies of available documents may be obtained as provided in part 7 of this title.

(b) Documents available for inspection do not include materials determined to be withheld from public disclosure under § 107.5 and in accordance with the applicable provisions of section 552(b) of title 5, United States Code, and part 7 of this title.

7. In § 107.201, paragraph (d) is revised to read as follows:

§ 107.201 Purpose and scope.

* * * * *

(d) Unless otherwise ordered by the Associate Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

8. In § 107.202, in paragraph (a), the introductory text is revised to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe, that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous material transportation law, this subchapter or subchapter C that concerns that subject, is preempted:

* * * * *

§ 107.202 Amended]

9. In addition, in § 107.202, in paragraph (b)(3), the wording ''49 U.S.C. 5125 (b) or (c)'' is revised to read ''49 U.S.C. 5125(c)''.

§ 107.203 [Amended]

10. In § 107.203, the following changes are made:

a. In paragraph (a), the wording ''a State, political subdivision, or Indian tribe'' is revised to read ''a State or political subdivision thereof or an Indian tribe'' each place it appears.

b. In paragraphs (a) and (d), the phrase ''for Hazardous Materials Safety'' is removed immediately following ''Associate Administrator'' each place it appears.

11. Section 107.205 is revised to read as follows:

§ 107.205 Notice.

(a) If the applicant is other than a State, political subdivision, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision, or Indian tribe concerned accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the application to the Associate Administrator. The application filed with the Associate Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each State, political subdivision, or Indian tribe official to whom a copy of the application was sent.

(b) The Associate Administrator will publish notice of, including an opportunity to comment on, an application in the Federal Register and may notify in writing any person readily identifiable as affected by the outcome of the determination.

(c) Each person submitting written comments to the Associate Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Associate Administrator that he or she has complied with this requirement. The Associate Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond. Late-filed comments are considered so far as practicable.

§ 107.207 [Amended]

12. In § 107.207, the following changes are made:

a. In paragraph (a), the wording ''or her'' is added immediately following the word ''his'' each place it appears.

b. In paragraphs (a) and (b), the wording ''for Hazardous Materials Safety'' is removed immediately following ''Associate Administrator'' each place it appears.

c. In paragraphs (a) and (b), the wording ''or she'' is added immediately following the word ''he'' each place it appears.

13. In § 107.209, paragraph (b) is removed, and paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d), respectively, and newly designated paragraph (c) is revised to read as follows:

§ 107.209 Determination.

* * * * *

(c) The Associate Administrator provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator will publish the determination or notice of the determination in the Federal Register.

* * * * *

§ 107.209 [Amended]

14. In addition, in § 107.209, in paragraphs (a) and (b), the phrase ''for Hazardous Materials Safety'' is removed following ''Associate Administrator'' each place it appears.

15. In § 107.211, paragraph (a) is revised and a sentence is added at the end of paragraph (c) to read as follows:

§ 107.211 Petition for reconsideration.

(a) Any person aggrieved by a determination issued under § 107.209 may file a petition for reconsideration with the Associate Administrator. The petition must be filed within 20 days of publication of the determination in the Federal Register.

* * * * *

(c) * * * Late-filed comments are considered so far as practicable.

* * * * *

16. A new § 107.213 is added to read as follows:

§ 107.213 Judicial review.

A party to a proceeding under § 107.203(a) may seek review by the appropriate district court of the United States of a decision of the Associate Administrator by filing a petition with the court within 60 days after the Associate Administrator's determination becomes final. The determination becomes final when it is published in the Federal Register.

§ 107.215 [Amended]

17. In § 107.215, in paragraph (a), the phrase ''for Hazardous Materials Safety'' is removed immediately following ''Associate Administrator'' each place it appears, and the wording ''State, political subdivision, or Indian tribe'' is revised to read ''State or political subdivision thereof or an Indian tribe.''

18. In § 107.217, paragraph (d) is revised to read as follows:

§ 107.217 Notice.

* * * * *

(d) The Associate Administrator may notify any other persons who may be affected by the outcome of a determination on the application.

* * * * *

§ 107.217 [Amended]

19. In addition, in § 107.217, in paragraphs (a), (b), (c), and (e), the phrase ''for Hazardous Materials Safety'' is removed immediately following the wording ''Associate Administrator'' each place it appears, and the following sentence is added at the end of paragraph (c):

* * * * *

(c) * * * Late-filed comments are considered so far as practicable.

§ 107.219 [Amended]

20. In § 107.219, the following changes are made:

a. In paragraphs (a), (b), (c), and (d), the phrase ''for Hazardous Materials Safety'' is removed immediately following the wording ''Associate Administrator'' each place it appears.

b. In paragraphs (a) and (b), the wording ''or she'' is added immediately following ''he,'' each place it appears, and the wording ''or her'' is added immediately following ''his,'' each place it appears.

c. In paragraphs (c)(1) and (c)(2), the phrase ''State or political subdivision'' is revised to read ''State or political subdivision thereof or Indian tribe'' each place it appears.

21. Section 107.221 is revised to read as follows:

§ 107.221 Determination.

(a) After considering the application and other relevant information received or obtained during the proceeding, the Associate Administrator issues a determination.

(b) The Associate Administrator may issue a waiver of preemption only on finding that the requirement of the State or political subdivision thereof or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce. In determining if the requirement of the State or political subdivision thereof or Indian tribe unreasonably burdens commerce, the Associate Administrator considers:

(1) The extent to which increased costs and impairment of efficiency result from the requirement of the State or political subdivision thereof or Indian tribe.

(2) Whether the requirement of the State or political subdivision thereof or Indian tribe has a rational basis.

(3) Whether the requirement of the State or political subdivision thereof or Indian tribe achieves its stated purpose.

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the requirement of the State or political subdivision thereof or Indian tribe competes or conflicts with those of other States or political subdivisions thereof or Indian tribes.

(c) The determination includes a written statement setting forth relevant facts and legal bases and providing that any person aggrieved by the determination may file a petition for reconsideration with the Associate Administrator.

(d) The Associate Administrator provides a copy of the determination to the applicant and to any other person who substantially participated in the proceeding or requested in comments to the docket to be notified of the determination. A copy of the determination is placed on file in the public docket. The Associate Administrator will publish the determination or notice of the determination in the Federal Register.

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous material transportation law or any regulation issued thereunder, or whether preemption is waived.

22. In § 107.223, paragraph (a) is revised to read as follows, and the following sentence is added at the end of paragraph (c):

§ 107.223 Petition for reconsideration.

(a) Any person aggrieved by a determination under § 107.221 may file a petition for reconsideration with the Associate Administrator. The petition must be filed within 20 days of publication of the determination in the Federal Register.

* * * * *

(c) * * * Late-filed comments are considered so far as practicable.

23. Section 107.227 is revised to read as follows:

§ 107.227 Judicial review.

A party to a proceeding under § 107.215(a) may seek review by the appropriate district court of the United States of a decision of the Associate Administrator by filing a petition with the court within 60 days after the Associate Administrator's determination becomes final. The determination becomes final when it is published in the Federal Register.

§ 107.299 [Removed]

24. Section 107.299 is removed.

25. In § 107.305, paragraph (b) is revised to read as follows:

§ 107.305 Investigations.

* * * * *

(b) *Investigations and Inspections.* Investigations under 49 U.S.C. 5121(a) are conducted by personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49 U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists, also known as ''hazmat inspectors'' or ''inspectors,'' whom the Associate Administrator has designated for that purpose.

(1) An inspector will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An inspector may administer oaths and receive affirmations in any matter under investigation by the Associate Administrator.

(3) An inspector may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording.

(4) With concurrence of the Director, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, an inspector may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the inspector, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with § 107.13 (c) and (d). A person to whom a subpoena is directed may seek review of the subpoena by applying to the Office of Chief Counsel in accordance with § 107.13(h). A subpoena issued under this paragraph may be enforced in accordance with § 107.13(i).

* * * * *

§ 107.315 [Amended]

26. In § 107.315, in paragraphs (c) and (d), the last sentence is removed.

27. In § 107.331, the introductory paragraph and paragraph (d) are revised to read as follows:

§ 107.331 Assessment considerations.

After finding a knowing violation under this subpart, the Office of Chief Counsel assesses a civil penalty taking the following into account:

* * * * *

(d) The respondent's prior violations;

* * * * *

28. A new subpart H of part 107 is added to read as follows:

Subpart H—Approvals, Registrations and Submissions

Sec.

§ 107.701 Purpose and scope.

This subpart prescribes procedures for the issuance, modification and termination of approvals, and the submission of registrations and reports, as required by this chapter.

(b) The procedures of this subpart are in addition to any requirements in subchapter C of this chapter applicable to a specific approval, registration or report. If compliance with both a specific requirement of subchapter C of this chapter and a procedure of this subpart is not possible, the specific requirement applies.

(c) Registration under subpart F or G of this part is not subject to the procedures of this subpart.

§ 107.705 Registrations, reports, and applications for approval.

(a) A person filing a registration, report, or application for an approval, or a renewal or modification of an approval subject to the provisions of this subpart must—

(1) File the registration, report, or application with the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001, Attention: Approvals, DHM–32;

(2) Identify the section of the chapter under which the registration, report, or application is made;

(3) If a report is required by an approval, a registration or an exemption, identify the approval, registration or exemption number;

(4) Provide the name, street, mailing address, and telephone number of the person on whose behalf the registration, report, or application is made and, if different, the person making the filing;

(5) If the person on whose behalf the filing is made is not a resident of the United States, provide a designation of agent for service in accordance with § 107.7;

(6) Provide a description of the activity for which the registration or report is required; and

(7) Provide additional information as requested by the Associate Administrator, if the Associate Administrator determines that a filing lacks pertinent information or otherwise does not comply with applicable requirements.

(b) In addition to the provisions in paragraph (a) for an approval, an application for an approval, or an application for modification or renewal of an approval, the applicant must provide—

(1) A description of the activity for which the approval is required;

(2) The proposed duration of the approval;

(3) The transport mode or modes affected, as applicable;

(4) Any additional information specified in the section containing the approval; and

(5) For an approval which provides exceptions from regulatory requirements or prohibitions—

(i) Identification of any increased risk to safety or property that may result if the approval is granted, and specification of the measures that the applicant considers necessary or appropriate to address that risk; and

(ii) Substantiation, with applicable analyses or evaluations, if appropriate, demonstrating that the proposed activity will achieve a level of safety that is at least equal to that required by the regulation.

(c) For an approval with an expiration date, each application for renewal or modification must be filed in the same manner as an original application. If a complete and conforming renewal application is filed at least 60 days before the expiration date of an approval, the Associate Administrator, on written request from the applicant, will issue a written extension to permit operation under the terms of the expired approval until a final decision on the application for renewal has been made. Operation under an expired approval is prohibited absent a written extension. This paragraph does not limit the authority of the Associate Administrator to modify, suspend or terminate an approval under § 107.713.

(d) To request confidential treatment for information contained in the application, the applicant shall comply with § 107.5(a).

§ 107.709 Processing of an application for approval, including an application for renewal or modification.

(a) No public hearing or other formal proceeding is required under this subpart before the disposition of an application.

(b) At any time during the processing of an application, the Associate Administrator may request additional information from the applicant. If the applicant does not respond to a written request for additional information within 30 days of the date the request was received, the application may be deemed incomplete and denied. However, if the applicant responds in writing within the 30-day period requesting an additional 30 days within which it will gather the requested information, the Associate Administrator may grant the 30-day extension.

(c) The Associate Administrator may grant or deny an application, in whole or in part. At the Associate Administrator's discretion, an application may be granted subject to provisions that are appropriate to protect health, safety and property. The Associate Administrator may impose additional provisions not specified in

the application, or delete conditions in the application which are unnecessary.

(d) The Associate Administrator may grant an application on finding that—

(1) The application complies with this subpart;

(2) The application demonstrates that the proposed activity will achieve a level of safety that—

(i) Is at least equal to that required by the regulation, or

(ii) If the regulations do not establish a level of safety, is consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce;

(3) The application states all material facts, and contains no materially false or materially misleading statement;

(4) The applicant meets the qualifications required by applicable regulations; and

(5) The applicant is fit to conduct the activity authorized by the approval, or renewal or modification of approval. This assessment may be based on information in the application, prior compliance history of the applicant, and other information available to the Associate Administrator.

(e) Unless otherwise specified in this chapter or by the Associate Administrator, an approval in which a term is not specified does not expire.

(f) The Associate Administrator notifies the applicant in writing of the decision on the application. A denial contains a brief statement of reasons.

§ 107.711 Withdrawal.

An application may be withdrawn at any time before a decision to grant or deny it is made. Withdrawal of an application does not authorize the removal of any related records from the RSPA dockets or files. Applications that are eligible for confidential treatment under § 107.5 will remain confidential after the application is withdrawn. The duration of this confidential treatment for trade secrets and commercial or financial information is indefinite, unless the party requesting the confidential treatment of the materials notifies the Associate Administrator that the confidential treatment is no longer required.

§ 107.713 Approval modification, suspension or termination.

(a) The Associate Administrator may modify an approval on finding that—

(1) Modification is necessary to conform an existing approval to relevant statutes and regulations as they may be amended from time to time; or

(2) Modification is required by changed circumstances to enable the approval to continue to meet the standards of § 107.709(d).

(b) The Associate Administrator may modify, suspend or terminate an approval, as appropriate, on finding that—

(1) Because of a change in circumstances, the approval no longer is needed or no longer would be granted if applied for;

(2) The application contained inaccurate or incomplete information, and the approval would not have been granted had the application been accurate and complete;

(3) The application contained deliberately inaccurate or incomplete information; or

(4) The holder knowingly has violated the terms of the approval or an applicable requirement of this chapter in a manner demonstrating lack of fitness to conduct the activity for which the approval is required.

(c) Except as provided in paragraph (d) of this section, before an approval is modified, suspended or terminated, the Associate Administrator notifies the holder in writing of the proposed action and the reasons for it, and provides an opportunity to show cause why the proposed action should not be taken.

(1) The holder may file a written response with the Associate Administrator within 30 days of receipt of notice of the proposed action.

(2) After considering the holder's or party's written response, or after 30 days have passed without response since receipt of the notice, the Associate Administrator notifies the holder in writing of the final decision with a brief statement of reasons.

(d) The Associate Administrator, if necessary to avoid a risk of significant harm to persons or property, may in the notification declare the proposed action immediately effective.

§ 107.715 Reconsideration.

(a) An applicant or a holder may request that the Associate Administrator reconsider a decision under § 107.709(f) or § 107.713(c). The request must:

(1) Be in writing and filed within 20 days of receipt of the decision;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the request to reconsider; and

(4) State in detail the modification of the final decision sought.

(b) The Associate Administrator considers newly submitted information on a showing that the information could not reasonably have been submitted during application processing.

(c) The Associate Administrator grants or denies, in whole or in part, the relief requested and informs the requesting person in writing of the decision.

§ 107.717 Appeal.

(a) A person who requested reconsideration under § 107.715 may appeal to the Administrator the Associate Administrator's decision on the request. The appeal must:

(1) Be in writing and filed within 30 days of receipt of the Associate Administrator's decision on reconsideration;

(2) State in detail any alleged errors of fact and law;

(3) Enclose any additional information needed to support the appeal; and

(4) State in detail the modification of the final decision sought.

(b) The Administrator, if necessary to avoid a risk of significant harm to persons or property, may declare the Associate Administrator's action effective pending a decision on appeal.

(c) The Administrator grants or denies, in whole or in part, the relief requested and informs the appellant in writing of the decision on appeal. The Administrator's decision on appeal is the final administrative action.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

29. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.1 [Amended]

30. In § 171.1, in the introductory text of paragraph (a), the wording ''in commerce'' is added immediately following the wording ''materials'' and preceding ''by''.

31. Also in § 171.1, a new paragraph (d) is added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(d) The use of terms and symbols prescribed in this subchapter for the marking, labeling, placarding and description of hazardous materials and packagings used in their transport.

32. In § 171.2, paragraphs (a), (b), (c) and (d) are revised and a new paragraph (h) is added to read as follows:

§ 171.2 General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is properly classed, described, packaged, marked, labeled, and in

condition for shipment as required or authorized by applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(b) No person may transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is handled and transported in accordance with applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(c) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter, governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired and retested, as appropriate, in accordance with applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(d) The representations, markings, and certifications subject to the prohibitions of paragraph (c) of this section include, but are not limited to—

(1) Specification identifications that include the letters ''ICC,'' ''DOT,'' ''MC,'' or ''UN'';

(2) Exemption, approval, and registration numbers that include the letters ''DOT,'' ''EX,'' ''M,'' or ''R''; and

(3) Test dates associated with specification, registration, approval, retest or exemption markings indicating compliance with a test or retest requirement of this subchapter, or an exemption, an approval or a registration issued under this subchapter or subchapter A of this chapter.

* * * * *

(h) No person shall—

(1) Falsify or alter an exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter; or

(2) Offer a hazardous material for transportation or transport a hazardous material in commerce, or represent, mark, certify, or sell a packaging or container, under a false or altered exemption, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter.

§ 171.3 [Amended]

33. In § 171.3, paragraph (c) and the Note are removed, and paragraph (d) is redesignated as paragraph (c).

34. In § 171.8, the definitions of ''Approval'' and ''Exemption'' are added in alphabetical order and the definition of ''Person'' is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Approval means a written authorization, including a competent authority approval, from the Associate Administrator to perform a function for which prior authorization by the Associate Administrator is required under subchapter C of this chapter.

* * * * *

Exemption means a document issued under the authority of 49 U.S.C. 5117 by the Associate Administrator that authorizes a person to perform a function that is not otherwise authorized under this subchapter, subchapter C, or other regulations issued under 49 U.S.C. 5101–5127 (e.g., Federal Highway Administration routing).

* * * * *

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof; or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous material for transportation in commerce or transports hazardous material to further a commercial enterprise, but such term does not include:

(1) The United States Postal Service;

(2) For the purposes of 49 U.S.C. 5123 and 5124, any agency or instrumentality of the Federal Government.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

35. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

36. In § 173.22a, a new paragraph (c) is added to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(c) When an exemption issued to a person who offers a hazardous material contains requirements that apply to a carrier of the hazardous material, the offeror shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered. When the provisions of the exemption require it to be in the possession of a carrier during transportation in commerce, the carrier shall maintain the copy of the exemption in the same manner as required for a shipping paper.

PART 178—SPECIFICATIONS FOR PACKAGINGS

37. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

38. In § 178.3, a new paragraph (d) is added to read as follows:

§ 178.3 Marking of packagings.

* * * * *

(d) No person may mark or otherwise certify a packaging or container as meeting the requirements of a manufacturing exemption unless that person is the holder of or a party to that exemption, an agent of the holder or party for the purpose of marking or certification, or a third party tester.

Issued in Washington, DC on May 2, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–11400 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 951227306–5306–01; I.D. 043096A]

Pacific Coast Groundfish Fishery; Closure and Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; fishing restrictions; request for comments.

SUMMARY: NMFS announces the closure of the open access fishery for thornyheads taken and retained north of Point Conception, CA (34°27′ N. lat.), and a further restriction to the open access fishery for sablefish taken with nontrawl gear north of the Conception subarea (36°00′ N. lat.). This action is authorized by the Pacific Coast Groundfish Fishery Management Plan

(FMP), which governs the groundfish fishery off Washington, Oregon, and California. The closure and trip limit are designed to keep landings as close as possible to the 1996 open access allocations for these species.

DATES: Effective from 0001 hours (local time) May 3, 1996, until the effective date of the 1997 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the Federal Register. Comments will be accepted through May 24, 1996.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region (Regional Director), National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: Management measures for the open access fishery apply to any vessel that takes and retains groundfish and that does not have a valid limited entry permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. Open access gear includes longline, trap, pot, hook and line (fixed or mobile), set net (south of 38° N. lat. only), and trawls used to target non-groundfish species (pink shrimp or prawns and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). The following changes to routine management measures in the open access fisheries for thornyheads and sablefish were recommended by the Pacific Fishery Management Council (Council) at its April 8–12, 1996, meeting in San Francisco, CA.

Open Access Thornyhead Fishery. Thornyheads consist of two species (shortspine and longspine thornyheads) that often are caught together. Because of difficulties in identifying and monitoring the two species separately in the open access fishery, this fishery has been managed for both species combined. Through 1995, separate open access and limited entry allocations had not been implemented for shortspine thornyheads because landings were thought to be negligible in the open access fishery. However, at its October 1995 meeting, the Council concluded that the best available information indicated that about 24 metric tons (mt) had been taken north of Pt. Conception in 1995, indicating expansion in the fishery since the 1984–88 window period used to determine open access and limited entry allocations. The Council responded by recommending that limited entry and open access allocations be implemented for shortspine thornyheads for 1996. The 1996 open access allocation for shortspine thornyheads is only 4 mt, and applies north of Pt. Conception (34°27′ N. lat.). To keep landings close to the open access allocation, a coastwide daily trip limit of 50 lb (23 kg) (round weight) was applied for both species of thornyheads combined on January 1, 1996 (61 FR 279, January 4, 1996). A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time, and only one landing of the trip-limit species may be made in that 24–hour period. Daily trip limits may not be accumulated.

The best available information at the April 1996 Council meeting indicated that landings of thornyheads in the open access fishery had reached 18.7 mt north of Pt. Conception by the end of March 1996. Of this, about 11 mt was shortspine thornyheads taken in California, exceeding the 1996 open access allocation for shortspine thornyheads north of Pt. Conception. The Council recommended that the open access fishery for thornyheads be closed north of Pt. Conception as soon as practicable for the rest of the year. Closure means taking and retaining, possessing, or landing thornyheads caught north of Pt. Conception with any open access gear (including open access trawl gear) is prohibited, and offloading must begin before the time the fishery closes. The 50–lb (23–kg) daily trip limit on thornyheads remains in effect south of Pt. Conception because the harvest guideline does not apply in that area. This daily trip limit is believed to be too small to encourage effort shifts into the area.

Open Access Sablefish Fishery. In 1995, the daily trip limits for sablefish in the open access nontrawl fishery were 300 lb (136 kg) per day north of the Conception subarea (36°00′ N. lat.) and 350 lb (159 kg) per day in the Conception subarea (36°00′ N. lat. to the U.S.-Mexican border). The best available information at the April 1996 Council meeting indicated that 119 mt of sablefish had been taken in the open access fishery in California by the end of March and that the rate of landings would need to be reduced by 40 percent to avoid reaching the 463–mt open access allocation before the end of the year. After hearing considerable testimony that a target fishery for less than 300 lb (136 kg) of sablefish per day would result in substantial discards, or would be too low to sustain a viable fishery, the Council agreed to maintain the current daily trip limit. However, it recommended further constraining landings by adding a cumulative trip limit of 2,100 lb (952 kg) north of 36° N. lat. per vessel per month. A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time (in this case, 1 month). Landings made under the daily trip limits count toward the cumulative limit. This cumulative monthly limit would accommodate seven daily landings at 300 lb (136 kg). Any open access landings of sablefish made in May 1996 (even if made before this closure is filed with the Office of the Federal Register) will be counted toward the 2,100–lb (952–kg) cumulative limit for the month. This cumulative monthly limit does not apply to open access trawl fisheries because they target on non-groundfish species (pink shrimp, prawns, California halibut, and sea cucumbers) and are constrained by other limits.

For the above reasons, NMFS concurs with the Council's recommendations and modifies the annual management measures announced at 61 FR 279 (January 4, 1996), as amended, as follows:

1. Paragraph IV.I(1)(c)(ii) is revised to read as follows:

''(ii) A daily trip limit of 50 lb (23 kg) of thornyheads taken and retained south of Pt. Conception, CA.''

2. A new paragraph IV.I(1)(e) is added to read as follows:

''(e) *Closure - thornyheads north of Pt. Conception*. The open access fishery for thornyheads (shortspine or longspine) north of Pt. Conception, CA is closed. This closure applies to thornyheads taken and retained with all open access gear. Open access gear is gear used to take and retain groundfish that does not have a valid limited entry permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish, including longline, trap, pot, hook-and-line (fixed or mobile), set net (south of 38° N. lat. only), and trawls used to target non-groundfish species (pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers).''

3. Paragraph IV.I.(2)(a) is revised to read as follows:

''(a) *North of 36*°00′ N. lat. The cumulative trip limit for sablefish taken and retained north of 36°00′ N. lat. is 2,100 lb (952 kg) per month. The daily trip limit for sablefish taken and retained north of 36°00′ N. lat., which

counts toward the cumulative limit, remains at 300 lb (136 kg).''

Classification

These actions are authorized by the FMP, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. Because of the need for immediate action to reduce the harvest of shortspine thornyheads, and because the public had an opportunity to comment on the action at the April 1996 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 663.23(c)(1)(i)(E), (G), and (L), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–11546 Filed 5–3–96; 4:47 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 050396C]

Groundfish of the Gulf of Alaska; Pacific cod in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of Pacific cod in the Western Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) of Pacific cod in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 5, 1996, until 12 midnight A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the TAC for Pacific cod in the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 18,850 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for Pacific cod in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific cod in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–11547 Filed 5–3–96; 4:47 pm]

BILLING CODE 3510–22–F

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50 CFR Part 672

[Docket No. 960129018–6018–01; I.D. 050396B]

Groundfish of the Gulf of Alaska; Pacific cod in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of Pacific cod in the Central Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) of Pacific cod in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 5, 1996, until 12 midnight A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the TAC for Pacific cod in the Central Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 42,900 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for Pacific cod in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific cod in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–11548 Filed 5–3–96; 4:47 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 91
Thursday, May 9, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AF12

Modifications to Fitness-For-Duty Program Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to modify the current Fitness-For-Duty Program (FFD) requirements. The proposed amendments would apply to all licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess or transport Category I nuclear material. The proposed rule is intended to ensure compatibility with changes made to the Department of Health and Human (HHS) testing guidelines, reduce unnecessary burdens, and ensure continued protection of public health and safety.

The NRC specifically requests comments on a number of issues and, in particular, as to whether the changes would provide a substantial increase in the overall protection of the public health and safety and the common defense and security, whether the rule as whole does not constitute a backfit since the rule's cumulative effect is to ease licensee burdens or leave them essentially the same, whether those subject to the rule would not object to the new requirements in view of their perception of overall benefit and, if so, whether their non-objection could be grounds for not applying the backfit rule.

DATES: The comment period expires August 7, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 am and 4:15 pm on Federal workdays.

Copies of the draft regulatory analysis, comments received, the Americans With Disabilities Act Technical Assistance Manual, HHS's Medical Review Officer Manual, and NIDA's Technical Advisory of March 11, 1991, may be examined at: the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of NUREG/CR–5784, ''Fitness for Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues,'' NUREG–1385, ''Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions,'' and NUREG/CR–5758, ''Fitness for Duty in the Nuclear Power Industry: Annual Summary of Program Performance Reports,'' CY 1994, Volume 5, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Loren L. Bush, Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–2944.

SUPPLEMENTARY INFORMATION:

Background

The NRC is proposing to amend its regulations on ''Fitness-for-Duty Programs,'' as part of its ongoing activities to improve its regulations.

The objective of the licensee's fitness-for-duty program is to provide reasonable assurance that nuclear power plant personnel are reliable, trustworthy, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. Fitness-for-duty programs developed under the requirements of 10 CFR Part 26 are intended to create an environment which is free of drugs and the effects of such substances.

In its deliberation of the many issues associated with the rulemaking, the Commission desired that the rule ensure a proper balance between safeguarding individual rights and the Commission's responsibility to protect public health and safety. The changes proposed in this rulemaking are intended to be consistent with the Commission's original goals and to ensure there is a proper balance between the Commission's responsibility for protecting the public health and safety and its interest in protecting individual employee rights from unconstitutional invasion of their right to privacy.

The NRC has reviewed the experience gained since publication of the rule on June 7, 1989 (54 FR 24468), which was implemented by licensees January 3, 1990. NRC review included information from several sources, such as inspections, periodic reports by licensees on program performance, reports of significant FFD events, industry-sponsored meetings, initiatives by the Nuclear Management and Resources Council (NUMARC) (now the Nuclear Energy Institute) and the Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly the National Institute on Drug Abuse [NIDA]) and its Drug Testing Advisory Board, and current literature. The review indicates that, although the rule is fundamentally sound and provides a means for deterrence and detection of substance abuse, some matters need to be addressed. These matters include the—

(1) Need to ensure compatibility with changes made to the HHS guidelines;

(2) Reduction of burden on licensees while fulfilling the purpose of the rule;

(3) Need for a limited number of new requirements, e.g., to further reduce the potential for subversion of the testing process and to make clear that the appeal process applies to all persons covered by the rule; and

(4) Need to clarify the Commission's original intent in several areas to reduce incorrect or inconsistent use and differing interpretations and to make a number of administrative changes.

While none of the proposed amendments represent major changes,

they do represent modifications that would substantially reduce the cost of implementation to licensees; enhance overall program integrity, effectiveness, and efficiency; and help to ensure the continued protection of public health and safety.

Discussion

The proposed amendments take into account the experience gained in implementing the initial rule, developments in the FFD area, and actions by other Government agencies on drug testing and other FFD concerns. During implementation of new regulations, particularly regulations in rapidly evolving disciplines such as drug testing and employee reliability, a substantial number of lessons are learned from experience. The first five years of experience with the NRC's fitness-for-duty rule are no exception. A significant number of the proposed revisions are adjustments to the rule that would decrease the burden on licensees without reducing the protection of public health and safety afforded by the rule. For example, one proposed revision would allow licensees to grant unescorted access to personnel covered by another licensee's FFD program. This would facilitate interchange of employees in, for example, ''peer evaluator'' situations. Another proposed revision of this type would permit licensees to accept generic portions of training provided by another licensee to people covered by the rule. This revision would recognize that significant portions of all licensees' fitness-for-duty training cover the same general subjects and would facilitate more timely contractor support during outages.

While some proposed revisions would increase program efficiency, others would ensure that the Commission's FFD program more effectively achieves its objectives. For example, the Commission is proposing several revisions to the rule's drug and alcohol testing requirements that would clarify testing processes and purposes. While many of these rule changes would strengthen testing requirements, others would reduce the testing burden on licensee and contractor employees. These and other revisions would bolster the rule's protection of public safety while reducing the industry's regulatory burden where possible.

The NRC is also proposing a substantial number of revisions to respond to legal and regulatory changes that have occurred since the publication of 10 CFR Part 26. For example, the Department of Transportation (DOT) and its operating administrations (e.g., the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Federal Highway Administration (FHA)) and other Federal and State agencies have expanded their drug and alcohol testing requirements during the past five years. Some of these regulatory changes have created requirements applicable to some licensee employees and contractors that duplicate the NRC's drug and alcohol testing requirements. To reduce unnecessarily duplicative burdens, the Commission is proposing to permit testing performed under these other programs to be accepted in lieu of 10 CFR Part 26 testing when individuals covered by an NRC program are also subject to another program. Another change since the publication of 10 CFR Part 26 has been the implementation of the requirements of the Americans with Disabilities Act (ADA). While the ADA specifically exempts the NRC's program from certain requirements, various proposed revisions to the regulation accommodate certain aspects of the Act. For example, the current rule requires licensees to determine whether unescorted access to protected areas and other activities specified in 10 CFR 26.2 have ever been denied to people seeking unescorted access because of substance abuse and related activities. This section would be revised to limit such inquiry to events that may have occurred during only the previous five years.

During the first years of FFD rule implementation a number of requirements have been found to be ambiguous and therefore subject to inconsistent application by licensees. These ambiguities have been costly to licensees and NRC staff as they have required a substantial number of discussions involving licensee FFD staff, attorneys, and consultants; NRC inspectors; and NRC headquarters staff. Although these ambiguities have already been clarified for many licensee programs, the NRC is proposing revisions that would clarify the Commission's intent and help ensure that the regulation is consistently implemented, inspected, and enforced throughout the industry. Increased consistency of rule application throughout the industry will benefit licensees and their employees by reducing the chances of arbitrary or discriminatory application of the rule.

Finally, there are a number of proposed revisions that would improve the clarity of the rule. For example, several terms regarding the testing process and testing results have been more carefully defined and consistently used to eliminate difficulties in interpretation.

In considering the actions to be taken, the NRC will continue to consider the proper balance between safeguarding an individual's rights and protecting public health and safety.

In proposing these FFD rule revisions, the NRC also notes that it is continuing to move toward a performance-based regulatory approach in most of its rule making. Performance-based regulations are intended to give regulated entities clear guidance as to the objective of those regulations but not to be overly prescriptive in mandating specific means by which those entities must achieve the objectives. In taking this approach, the Commission expects to promote efficiencies in nuclear facility operations while maintaining the highest standards of public health and safety. Both NRC policy and Congressional directives emphasize the need for the Commission to move toward performance-based regulation.

While some of the proposed FFD rule revisions reflect this performance-based philosophy—most notably the increased licensee discretion incorporated into § 26.80 auditing requirements—the somewhat prescriptive nature of the current 10 CFR Part 26 (particularly of Appendix A), and many of the proposed revisions, are a partial departure from that regulatory approach. The NRC believes that several characteristics of and issues associated with fitness-for-duty programs make it necessary for the Commission to continue to provide detailed directives in this particular context. A relatively more specific regulatory approach, for example, will continue to assure that state and local restrictions will not hinder the stringent drug and alcohol testing needed to assure that personnel covered by the rule will continue to safely and competently perform their duties. If the NRC's requirements are not clearly stated in the rule, some state and local laws would prohibit licensees from implementing key program elements, thus making complete achievement of the rule's performance objectives difficult or impossible. The NRC believes that it must maintain the specificity of this rule in order to clearly preempt such state and local laws that could otherwise apply to licensees' fitness-for-duty programs.

The rule's specificity also protects the rights of personnel subject to the rule's mandates. Many of the rule's detailed requirements address the need to assure that testing is performed in a highly reliable manner and that workers are not wrongly accused due to false positive test results. Many of these details address these concerns and have served to provide high confidence that false

positives will not be obtained. While protecting workers against unwarranted damage to their careers in this way, these detailed requirements provide quality controls that also assure accurate, valid, and dependable test results. This, in turn, bolsters FFD program credibility and acceptance among workers. The specific provisions in the rule have assured workers who do not abuse drugs or alcohol that FFD program requirements are administered fairly and competently and that their fellow workers who do violate FFD policy will likely be detected and removed from duty.

The rule's specificity has also benefited licensees during the first five years of the rule's implementation. This specificity has, for example, helped assure that positive test results can be more easily defended when challenged in court and during unemployment proceedings. They have also provided a clear statement of the NRC's position for licensees and labor representatives to use when negotiating FFD-related issues in collective bargaining agreements. The introduction of drug testing and related fitness-for-duty program requirements into the workplace is a mandatory issue for collective bargaining under the National Labor Relations Act. A prescriptive fitness-for-duty rule enables licensees and labor representatives to more effectively achieve the NRC's program objectives by clearly showing that the NRC requires particular program elements to be implemented in specific ways.

Like the NRC, other Federal and state agencies have also found it necessary to establish specific requirements rather than adopt a more performance-based approach to assuring worker fitness. For example, the detailed nature of the NRC's FFD rule is matched by the drug use and alcohol abuse prevention rules promulgated by the DOT and its five operating administrations. The level of detail of the HHS requirements for the testing of Federal workers is also comparable to that provided by Part 26. The experience of these agencies bears out the need for relatively specific regulations in this workplace fitness context.

The NRC seeks public comment on the following issues. Public comments should be submitted to the NRC as indicated under the heading **ADDRESSES.**

1. Would any of the proposed changes, group of related requirements (e.g., modifications to prevent subversion of the testing process, further ensure the accuracy and integrity of testing, clarify actions for removal), or the rulemaking as a whole provide a substantial increase in the overall protection of the public health and safety or the common defense and security? Are the groupings and subgroupings of the changes contained in the Backfit Analysis section of this Federal Register notice appropriate and are the changes categorized properly? Are the changes in Group III worthwhile and necessary to better accomplish the FFD rule's objective, clarify the rule's existing requirements, and reduce ambiguities. Does the rule as a whole not constitute a backfit since the rule's cumulative effect is to ease licensee burdens or leave them essentially the same, rather than to increase them. Does anyone subject to the rule not object to the new requirements in view of their perception of an overall benefit and, if so, would their non-objection be grounds for not applying the backfit rule? Although the NRC believes that the proposed specific changes to the fitness-for-duty rule (FFD) would be the most efficient method of accomplishing the regulatory objectives of the changes, are there any viable alternative approaches that should be considered, particularly with respect to the proposed changes in Group III B? Could the rule be less specific in stating the requirements? The staff's analysis of alternative approaches such as development of a Regulatory Guide, NUREG good practices, meetings with licensees, or industry initiatives, is contained in the draft Regulatory Analysis.

2. Should the NRC revise Appendix A to 10 CFR Part 26 to incorporate revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs recently adopted by the Department of Health and Human Services (HHS) (June 9, 1994; 59 FR 29908)? The Commission proposes adoption of the changes to the HHS guidelines. In most instances, the HHS guidelines have been adopted as published by HHS; however, in some cases modifications are proposed to allow compatibility within the framework of the original FFD rule (e.g., on-site testing provisions dictated differences in minimum specimen volume, minimum number of blind performance specimens, on-site determination of the validity of specimens). The NRC desires to be consistent with the HHS Guidelines, absent a compelling reason why a departure is necessary.

3. With respect to the discussion of the proposed changes to § 26.24, are there any alternative techniques for testing for alcohol that should be considered for adoption by the NRC?

4. During the past five years of program operations, several parties have recommended that the NRC consider obtaining certain types of information in addition to that currently required to be submitted under the provisions of § 26.71(d). They believe that the Commission could use such information to better manage its FFD program oversight responsibilities, which includes formulation of public policy. The specific additional types of information and their potential use by the NRC are described in the discussion of proposed revisions to § 26.71 but are not incorporated into the proposed changes to the text of the rule. The NRC requests public comment on whether the licensees should be required to collect, analyze, and submit to the NRC such additional types of information.

5. The NRC is proposing to add a new Section 2.7(e) to Appendix A that would require testing to determine specimen validity (i.e., detect evidence of adulteration or dilution) before performing a screening test on site (if appropriate) and at the HHS laboratory. This would be an adaptation of a change HHS made to its guidelines in June, 1994. However, not all dilute specimens are the result of attempts to avoid detection. Hence, to minimize the probability of incorrect conclusions from such events, suspect specimens, including those with abnormal specific gravity (SG) would be subject to screening and confirmation testing using the limit of detection that the laboratory is capable of performing. The Commission requests comments regarding this change, and, in addition, requests comments on three other revisions to detect evidence of adulteration or dilution that are under consideration:

a. Including Ph and/or creatinine as well as SG in the required testing to determine specimen validity;

b. Requiring tests to determine specimen validity (which might include SG, Ph, and/or creatinine) immediately after specimen collection at all sites and immediate collection of a second specimen from those individuals providing specimens with abnormal qualities; and

c. Requiring tests at one-half of the cut-off levels specified for each drug instead of at the HHS-certified laboratory's limit of detection for suspect specimens.

6. With respect to the discussion of the proposed changes to Section 2.7 of Appendix A:

a. Should the NRC require tests for agents that can be added to urine as an attempt to mask THC (marijuana) or other drugs?

b. Should the NRC raise the cutoff levels for screening and confirmation

tests for opiates to reduce the laboratory-confirmed positives for opiates that the medical review officer (MRO) determines to be negative? Given the high level of concern for safety in the nuclear industry, should the NRC retain the current levels, even if HHS should raise the levels for ''demand reduction'' programs covered by its Guidelines as it proposed on November 16, 1995 (60 FR 57587).

7. A key element of assuring the integrity of the testing program is the continued assurance of test accuracy through licensees' submission of blind performance test specimens to HHS-certified laboratories as required by Section 2.8(e) of Appendix A. The NRC has received a number of suggestions regarding improving these blind performance test specimen requirements. The Commission is considering each of these suggested revisions and invites public comment on the following:

a. A limited HHS survey of blind performance test specimens supplied by various vendors has indicated a wide range of drug or metabolite concentrations in spiked specimens. Should the NRC require licensees to assure that concentration ranges for blind performance test specimens be within a defined range (to be determined in consultation with HHS)?

b. Should the NRC require that providers of performance test specimens be separate and independent (no conflict of interest) from those performing the specimen collection, specimen testing, MRO, and auditing functions?

8. The NRC has received requests from several licensees and vendors to permit the on-site use of non-instrumented, qualitative immunoassay methods that involve the use of inexpensive, disposable devices. As discussed in more detail under the proposed changes to Section 2.7 of Appendix A, these screening techniques have not been validated to achieve the high levels of specificity and accuracy that are needed in FFD programs. Of concern to the Commission is that these devices may produce an unacceptably high number of false negative test results and may be easily subverted. The Commission invites public comment on the advisability of creating guidelines, quality assurance procedures, and performance standards to govern use of these devices. Alternatively, should the Commission prohibit the use of these devices until such time as HHS (or another agency) has developed guidelines, procedures, and standards. Should there be a Conforming Products List for these devices similar to that published by the National Highway Traffic Safety Administration (NHTSA) for evidential breath measurement devices? Who should administer such a program?

Groups of Interrelated Revisions

Several of the proposed rule changes should be considered as groups of interrelated revisions that, if adopted, will interact with each other and with the current rule to accomplish important FFD objectives. Foremost among these are several revisions intended to minimize subversion of the testing process. Subversion has proven to be a continuing problem that threatens the effectiveness of workplace testing programs across the country. Although a number of techniques for subverting the testing process exist, flushing (diluting the specimen by drinking copious amounts of water) appears to be the most common. The proposed rule is intended to reduce the potential for successful subversion by flushing include (1) a requirement that licensees minimize the time between notification of the person to report for a random test and the collection of the specimen and (2) a requirement to determine the validity of specimens, which would be done through testing for specific gravity (SG) and may include several other methods. Other forms of subversion include the adulteration of specimens and the submission of surrogate specimens. Reducing the time between notification and testing will also counter these subversion techniques. To further reduce the potential for subversion, the NRC proposes using a narrower temperature range than set by the HHS guidelines for determining an acceptable specimen. This would make it more difficult to submit surrogate specimens and to use some dilution techniques. The proposed rule also would revise various sections to state more clearly that any act or attempted act of subversion is to be considered a violation of FFD policy. These revisions would provide an integrated response to the problem of subversion.

The Commission also is proposing to require that dilute and other questionable specimens be tested at the lowest level of detection (LOD) that the laboratory is qualified to use. While this revision would have an anti-subversion effect, its primary purpose would be to further protect those being tested. Currently, when a testing laboratory determines that a specimen is dilute or otherwise of questionable quality, the person tested is required to produce a second specimen under the direct observation of a collection site person. Test results indicate, however, that a great majority of dilute specimens result from reasons other than drug use. Requiring level-of-detection testing would infringe less on the individual's privacy by minimizing the need to produce a second specimen under direct observation. It would protect those being tested also by providing MROs with additional useful information to enable them to make accurate determinations of whether a specimen of questionable validity has actually been adulterated or diluted.

The proposed revisions pertaining to removal from unescorted access because of FFD policy violation and subsequent return to work constitute a second important group of interrelated revisions. One revision would clarify the Commission's original intent that any violation of a licensee's FFD policy must result in immediate removal from unescorted access status upon determination of a violation. Before a person is allowed to return to work, the condition that led to removal would have to be resolved through a medical determination of fitness conducted by appropriately qualified personnel and the person would have to be tested under a proposed return-to-duty testing requirement. Another related revision would clarify the Commission's intent that persons to whom unescorted access is reinstated after a policy violation are to be subject to follow-up testing for a three-year period. These and other proposed changes are intended to provide a more complete set of requirements relating to removals and return to duty.

The NRC is also proposing a set of revisions that would address situations in which individuals subject to the rule's testing requirements are only infrequently on site. Although most licensees have appropriate provisions in this area, several licensees have gone to great expense in bringing off-site workers to the collection facility for testing immediately upon their being chosen from the random testing pool. Some off-site workers have been required to drive 2–4 hours each way, fly cross country, and/or stay overnight. Some licensees use mobile collection facilities or teams to travel to the location of the person selected for testing. One proposed revision would make clear the NRC's original intent that people need not be immediately brought to the site for testing in such situations. Another related revision would eliminate the requirement for a suitable inquiry into a person's employment status when the person returns to a site after having not been covered by an FFD program for thirty days or less. This

revision would also clarify the requirements applicable to individuals who come to the site only infrequently.

A fourth group of revisions relates to testing for alcohol. Impairment caused by alcohol misuse creates a safety risk that is fundamentally similar to the risk posed by the misuse of illegal drugs. Some licensees, however, have imposed lesser sanctions for alcohol violations, an approach that is contrary to the Commission's intent. The NRC proposes to rectify this situation by explicitly requiring the same minimum sanctions for abuse of alcohol as currently exist for use of illegal drugs. Several proposed revisions would contribute to this objective. One revision would explicitly define the FFD policy violations involving alcohol. Likewise, alcohol test results between 0.02 and 0.04 percent would be forwarded to the Medical Review Officer (MRO) for back calculation to determine whether the person had an impermissibly high blood alcohol content while on duty. The requirements concerning conduct of suitable inquiries would also be revised to explicitly require that licensees determine whether persons seeking unescorted access status have ever used alcohol in a manner that resulted in on-duty impairment.

A fifth group of proposed revisions would address current ambiguities associated with the testing for the use of amphetamines. The standard for confirmatory testing for methamphetamines would be supplemented with the requirement that specimens must also contain a specific amount of amphetamine to be confirmed as positive. Multiple screening tests would be permitted to reduce the amphetamine testing problems caused by cross reactivity. A requirement that specimens confirmed positive for amphetamines must also be tested for d and l isomers is another related proposed revision. Another proposed revision would allow an extra two days for HHS-certified laboratories to report to licensees test results having suspected amphetamines. These revisions would serve to clarify and rationalize testing requirements for amphetamines.

Use of Old Test Results

The NRC also cautions licensees that test results obtained before January 3, 1990, should be considered with great care. The results may be questionable for the following reasons:

- The HHS laboratory certification program was initiated in 1988 and by the end of 1989 about 40 laboratories were certified. Many of the laboratories being used did not meet current performance standards for accuracy and reliability.
- In some cases, confirmation tests may not have been conducted.
- In many cases, there was no review by a technically qualified person, such as a MRO, to determine if legitimate uses of drugs (particularly amphetamines and opiates) were causing the results reported by the laboratories.

The NRC staff has been informed of several cases in which persons alleged they had a record of a questionably positive drug test 5 to 15 years ago, have since worked in the nuclear industry with a good work record and no positive drug tests, and are now denied employment. The Commission recognizes that positive drug test results obtained before the rule was implemented may indicate persons who have a significant past history of drug abuse but, because of the factors noted above, other available information should also be considered.

Description of Proposed Changes by Section

The following discussion describes the changes to the current FFD rule that are being proposed and the reasons for the changes.

Section 26.2 Scope

The NRC proposes to amend this section to include specified classes of personnel who administer testing programs. Although Section 2.3 of Appendix A requires that licensees carefully select and monitor persons responsible for administering the testing program based upon the highest standards of honesty and integrity, some licensees' testing programs have not included all persons originally intended to be tested. This action is taken to clarify the Commission's original intent because although these people normally work outside the protected area, their actions do have an ongoing effect on safety and would have an impact on the confidence of management and the workforce in the integrity of the program and the reliability of the results. Persons who administer testing programs are in a position to permit substance abusers to remain undetected. The persons who administer the tests could inadvertently omit testing of an employee as a result of impaired behavior on the part of the test administrator because of substance abuse or intentionally because of motives associated with substance abuse, empathy with the abuser, etc. Furthermore, the omission of test administrators from testing and other program requirements tends to undermine the credibility of licensees' FFD programs.

Several reported incidents have confirmed the need to assure that FFD program personnel meet the highest standards of honesty, integrity, reliability, and trustworthiness. For example, one licensee added collection personnel to the testing pool after investigation of an allegation determined that two specimen collectors were substance abusers. In another instance, a contracted MRO not in the testing pool was reported to be an alcoholic and an abuser of prescription drugs.

The proposed revision to § 26.2(a) would fulfill the NRC's original objective for this section and require all licensees to extend the coverage of their programs to the following three classes of FFD personnel:

- Personnel who can link test results with the person who was tested;
- Personnel making removal and return-to-work recommendations or decisions; and
- Personnel involved in the selection and notification of employees for testing and the collection of specimens.

Specimen collectors, the MRO, the FFD program manager, Employee Assistance Program (EAP) counselors, and other selected administrative staff would be examples of FFD program personnel who would be included within this clarification of the rule's scope. Testing of FFD personnel is further discussed in conjunction with Section 2.3 of Appendix A.

The NRC also proposes to amend § 26.2 to allow reduced scope programs for facilities that are in the process of being decommissioned. Because the level of risk associated with these facilities will decline during decommissioning, the revision is designed to provide the NRC with the flexibility to tailor the FFD program to site-specific factors as deemed appropriate by the NRC to protect public health and safety.

Finally, the NRC proposes to amend § 26.2 to provide that people covered by a program regulated by another Federal or state agency that meets the general performance objectives of the FFD rule need not be additionally covered by a licensee's FFD program. Duplicate testing and training requirements applicable to an appreciable number of individuals working at nuclear facilities have become an increasing problem as the Department of Transportation's drug testing requirements and new alcohol testing rule have been implemented. Differences in specific program requirements, such as the use of different cut-off levels (but which are at

least as stringent as the HHS guidelines), would be unlikely to have a significant effect on the licensee's FFD program in meeting the general performance objectives. The licensee would continue to be responsible for behavioral observation, immediate removal from duty of persons whose fitness may be questionable, and for-cause testing for a specific situation. This revision would reduce the burden on individuals covered by multiple Federal and State programs with requirements that duplicate the FFD rule.

Section 26.3 Definition

The NRC proposes that this section be modified to clarify definitions of some terms, to make terms and definitions more consistent with those used by other Federal agencies (including the Substance Abuse and Mental Health Services Administration and the Department of Transportation), to provide new definitions to support other sections of the rule, and to remove three terms, ''random test,'' ''follow-up testing,'' and ''suitable inquiry,'' because they are already fully defined in the text of the rule. In addition, several terms have been moved to this section from Section 1.2 of Appendix A because they first appear in the main body of the rule.

For the most part, changes in this section are intended to eliminate differing interpretations and ambiguities in current wording. The Commission proposes three changes to the terms used for definitions of drug test results. The changes include modification to the definition of ''confirmed positive test'' to reflect proposed changes to terms and definitions, and the addition of the terms ''laboratory confirmed positive'' and ''unconfirmed positive test result.'' ''Laboratory confirmed positive'' would refer to the positive outcome of a gas chromatography/mass spectrometry (GC/MS) test. These tests are reviewed by the MRO to determine if they show a violation of the FFD policy or if there is a medical explanation for the positive result. ''Unconfirmed positive test result'' would refer to the result of a screening test that is not negative. The original wording of the rule refers to these results in a number of ways, most often as ''presumptive positives.'' The term ''presumptive positive'' and other terms used to refer to this result have been replaced with ''unconfirmed positive test result'' throughout the rule to increase clarity and consistency. The definition of ''confirmatory test'' would be revised to reflect a proposed revision made elsewhere in the rule relating to blood tests for alcohol that could be used in an appeal. The term ''screening test'' would replace the former terms ''initial or screening test'' in the interests of clarity.

The NRC proposes to add a definition of ''medical determination of fitness'' to support proposed changes to other sections of the regulation. This term would clarify the role of the MRO or other licensed physician in determining fitness for duty and provide a standard regarding what constitutes this determination. The focus of the medical determination would be to determine if a rule or policy violation has occurred and to evaluate the potential for on-duty impairment (e.g., of sensory, cognitive, motor and communicative skills) that would interfere with the safe performance of the individual's duties.

A new definition of ''behavioral observation'' is proposed that would clarify the role of supervisors in monitoring the behavior of workers under their oversight. It is the NRC's intent that all personnel having unescorted access to the protected area be subject to behavioral observation. To accomplish this goal, supervisors are expected to observe the behavior of all personnel with whom they have routine contact, not only those workers for whom they have direct supervisory responsibility. Licensees would, for example, be responsible for ensuring that contractor employees whose supervisors may remain off site be subject to behavioral oversight by licensee supervisory personnel when within the protected area. The contractor employees would, however, still be subject to behavioral observation by their own supervisors when off site. A definition for ''supervisor'' is proposed to clarify that supervisors include all personnel with supervisory responsibilities over workers with unescorted access, whether they are on site or off site.

The NRC proposes to add the terms ''abuse of legal drugs'' and ''substance abuse'' and definitions for these terms to clarify the intent of the rule and to support changes to management actions and sanctions regarding alcohol and other legal drugs and substance abuse.

The NRC proposes to add the term ''subversion'' and to define it in terms of the intentional causing of a missing or inaccurate drug or alcohol test result at any stage of the testing program, including the process of selection and notification, specimen collection, specimen analysis, testing, and reporting of test results.

Finally, the NRC proposes that the definition of ''aliquot'' be modified by adding language designed to make it clearer that the aliquot is a representative sample of a specimen and can be used for retesting.

Section 26.7 Communications

A new section, ''Communications,'' similar to existing sections in other 10 CFR Parts would be added to ensure that communications with the NRC are processed properly.

Section 26.8 Information Collection Requirements: OMB Approval

The NRC proposes to delete § 26.8(c) which presents an estimate of the total time burden for this Part's recordkeeping requirements and solicits licensee comments concerning the accuracy of the estimate and ways by which the burden can be reduced. This information is not normally codified in the regulations and is being deleted to maintain consistency with other parts throughout 10 CFR Chapter I. Burden estimates and requests for public comments on the burden estimates continue to be published in the preamble of Federal Register Notices for NRC rulemaking in accordance with Office of Management and Budget (OMB) regulations.

Section 26.20 Written Policy and Procedures

The NRC proposes several changes to this section. One amendment would make it clear that licensees' overall description of their policy on FFD must be prepared in a summary form, which most licensees have done, and made readily available to employees covered by the rule [§ 26.20(a)]. It has been noted during inspections that a few licensees had incorporated their FFD policy into the several procedures that were not readily available to employees. The NRC's intent remains that licensees publish a statement notifying employees of the policy as is required by the Drug-Free Workplace Act of 1988.

Other amendments would clarify § 26.20 (a) and (d) to ensure that a licensee's FFD policy addresses employees' off-site involvement with illegal drugs, the abuse of legal drugs, the subversion of the testing process by adulterating or substituting specimens, the refusal to provide a specimen, and use of prescription and over-the-counter medications that may cause impairment. This revision would make explicit the need to address FFD concerns that have emerged during the first five years of program operation.

Another amendment would clarify the requirements pertaining to licensees' procedures to ensure that persons called in to perform an unscheduled working tour are fit to perform the task assigned [§ 26.20(e)]. This section currently

requires called-in employees to state whether they have consumed alcohol within the licensee's pre-duty abstinence period. The proposed revision would make it clear that this declaration of fitness includes fitness to perform tasks assigned, not just alcohol consumption. These revisions would afford employees an added safeguard in that they would have an opportunity to express their own opinion as to whether they believe themselves fit in view of fatigue, illness, use of medication or consumption of alcohol to perform assigned tasks. This requirement would also enable licensees to obtain the information over the telephone to avoid having to get that person safely home after arriving onsite unfit to work, call in another person, and avoid the potential for civil lawsuits that could arise from accidents while the called-in person is in travel.

Another amendment would remove the statement that the Commission may review the licensee's FFD policy and procedures at any time [§ 26.20(f)]. This provision is unnecessary because the Commission may always inspect the licensee's program.

A new § 26.20(f) would add a paragraph that would allow licensees to credit unescorted access status granted by other licensees. Such individuals must be covered by the random testing and behavioral observation programs of either the original licensee employer or that of the host licensee. This change would facilitate the interchange of personnel among licensees in, for example, situations where a ''peer evaluator'' from one licensee works with a second licensee (e.g., inspections conducted under the auspices of the Institute of Nuclear Power Operations (INPO)). It clarifies that there is no need for a licensee to audit another licensee's program before granting unescorted access to that licensee's employee.

The NRC continues to believe that an abstinence period of at least 5 hours preceding any scheduled working tour is appropriate and wishes to clarify the implications of this abstention period for employees. This requirement continues to accommodate a reasonable and moderate amount of off-duty alcohol consumption outside the abstention period. Employees do need to be aware, however, that immoderate alcohol consumption, even if it occurs before the start of the abstinence period, can later result in an FFD policy violation. If, for example, an employee were to consume a relatively large volume of alcohol six hours before starting work and, in the interim, consume a heavy meal (the consumption of food can significantly slow the metabolism of alcohol), the employee could be at risk of violating FFD policy (i.e., could have a blood alcohol content (BAC) of 0.04 percent or higher when reporting for work). Therefore, it is incumbent upon employees to exercise restraint in their alcohol consumption even outside of the 5-hour abstention period. Although moderate off-duty drinking is not prohibited by FFD policy, employees should understand heavy alcohol consumption can be an FFD concern even though it occurs before the abstinence period. The NRC is aware that some past alcohol-related violations of licensees' FFD policies have resulted from employees' lack of understanding of these issues. Communication of these matters to employees is particularly important because the proposed rule would make management sanctions mandatory for alcohol-related FFD policy violations.

Section 26.21 Policy Communications and Awareness Training

The NRC proposes to decrease the frequency of FFD policy and awareness refresher training from every 12 to every 24 months. However, the Commission expects that FFD program changes, such as would be mandated by final rulemaking, would be communicated to all affected workers before the changes are implemented. The material presented in this training is relatively straightforward and is not expected to change significantly over time. Refresher training on a nominal 24-month frequency would be sufficient to keep personnel covered by the rule aware of FFD program policy and procedures. Another proposed amendment to this section would allow licensees to accept the generic portions of training of individuals who have been subject to a Part 26 program at another site and have received initial or refresher training within the past 24 months; site-specific training would continue to be required before unescorted access may be granted. Policy communications and awareness training covers a number of common areas that are consistent across licensee programs. Because there are some differences among licensees, new personnel should be trained in those aspects of licensee programs that are particular to the site.

Section 26.22 Training of Supervisors and Escorts

The NRC proposes to amend the provision pertaining to the initial and refresher FFD training of supervisors and escorts. One amendment would clarify the NRC's intent that, except in the case of people receiving their initial supervisorial assignment, all supervisors of licensee employees and contractor personnel and all escorts must fully complete their initial FFD supervisory training before assignment to duties within the scope of Part 26. Supervisors of licensee employees receiving their initial assignment would be required to complete training as soon as feasible but would continue to have up to three months to complete initial training. Supervisors of contractor personnel receiving their initial supervisorial assignment would have only ten days to complete initial training. Given the higher rate of positive tests among contractor personnel, it is particularly important to ensure that contractor supervisors complete their training either before or very soon after they assume their duties. Although the NRC considered amending the rule to clarify requirements concerning situations in which contractor, and possibly some licensee, supervisors do not have unescorted access privileges themselves but supervise people who do have such privileges, it believes the following guidance should suffice. The NRC expects that those supervisors who do not come on site would be trained in drug recognition, behavioral observation, and procedures for initiating corrective action. The NRC also expects that, while on site, these workers are observed by someone trained in these matters.

The NRC is concerned that some licensees may have appointed people as ''acting'' supervisors for periods of less than three months and have given these people none of the programmatic training required by this section. The NRC believes that even ''acting'' supervisors must be trained in the five topics appearing in § 26.22(a) as soon as feasible.

The NRC is also proposing to allow a written examination that demonstrates an adequate knowledge of pertinent FFD issues and material to be used in lieu of refresher training for supervisors and escorts in two out of every three years. Allowing the use of a written exam would increase flexibility without compromising the integrity of FFD programs and may decrease administrative expenses. The NRC has declined to change the nominal 12-month frequency associated with this refresher training for supervisors and escorts as it proposes to do for the policy communications and awareness training required by § 26.21(b). Supervisors and escorts must, for example, be able to recognize drug use or degradation of performance of the

people working around them. Having training, or a written examination in lieu of training, at an interval of more than 12 months may not be sufficient to ensure that supervisors and escorts would remain diligent and effective in performing these functions.

Another proposed amendment would allow licensees to accept the training of people who have been subject to a Part 26 program at another site and have had initial or refresher training (or testing in lieu of refresher training) within 12 months before assignment to supervisory duties. This proposed revision would facilitate the movement of supervisory personnel among licensees and decrease licensee costs for training individuals in a number of common areas that are consistent across licensee programs. As noted previously, because there are some differences among licensees, new employees should be trained in those aspects of the licensee's program that are site specific.

As noted by the Commission's regulatory review group, behavioral observation training as described in § 26.22(a) should not focus solely on substance abuse. Instead, it should also provide managers and supervisors training in appropriate actions to take (e.g., referral to EAP) when individuals have FFD problems other than substance abuse that affect them (e.g., stress, fatigue).

Section 26.23 Contractors and Vendors

This section currently requires that personnel who have been denied access or removed from activities within the scope of Part 26 for violations of an FFD policy will not be assigned to activities within the scope of Part 26 without the knowledge and consent of the licensee. During the first five years of FFD program operations instances occurred in which personnel with a history of substance abuse known to the contractor employer were sent on site without the licensee being informed of such history. Therefore, this section is revised to make clear that persons with a known (to the contractor or vendor) history of substance abuse must not receive these assignments without the knowledge and consent of the licensee.

The NRC understands that some contractors have requested escorted access for individuals with a drug history in order to avoid informing the licensee. The Commission desires comments as to whether the rule should be revised so that this practice is no longer permitted.

Section 26.24 Chemical Testing

The NRC proposes to revise the descriptions of the four types of testing that are currently required. The proposed changes are intended to rectify inconsistent interpretations of testing requirements that have appeared across the industry during the five years of FFD program operations. In § 26.24(a)(1), chemical testing before granting unescorted access would be referred to as ''preaccess testing.'' It continues to be the NRC's intention that any test, whether before or after the beginning of a person's term of employment with the licensee, that is performed with the intent that it may be a test as required by § 26.24(a)(1) must meet the standards set forth in Part 26 and be reported to the NRC as a preaccess test. One proposed amendment to this paragraph designed to reduce unnecessarily redundant testing of applicants for access privileges, would allow licensees to consider any drug and alcohol test meeting Part 26 standards and performed within 60 days before the granting of unescorted access to serve as a preaccess test. A test performed by another licensee or under a testing program required by the U.S. Department of Transportation are examples of tests that would qualify as preaccess tests under this proposed revision. In such circumstances, the NRC would expect that licensees would use a dependable means of confirming that the person seeking access had actually been tested. This could be accomplished by the electronic exchange of pertinent information among licensees using a computerized data base that the industry is currently considering for implementation.

As another clarification of the NRC's original intent, as described in item number 4.5 of NUREG–1385, ''FFD in the Nuclear Power Industry: Responses to Implementation Questions,'' § 26.24(a)(1) would be amended to explicitly prohibit the granting of unescorted access until the person's negative preaccess test result has been obtained. However, another change would allow some relief from this requirement. Unescorted access could be granted before receipt of a negative test result if the person seeking access has no history indicating the use of illegal drugs or the abuse of legal drugs and has either had a negative result on a test meeting Part 26 standards performed within six months before the granting of unescorted access or been covered by a program meeting Part 26 standards for two consecutive weeks during that six-month period. This relief from the requirement to obtain a negative test result before the granting of access is based upon industry experience of the demonstrated reliability of workers who have been covered by a rigorous program in the past. In these circumstances, the NRC expects that licensees would confirm the occurrence of such tests or such coverage. These proposed revisions are intended to reiterate the importance attached to establishing an individuals' fitness status before unescorted access is granted. At the same time, these revisions would allow some efficiencies borne out by industry experience in the granting of access without compromising public health and safety. Some additional relief would be provided where the individual is transferring from another licensee. In this case, if the individual has been covered by an FFD program for 30 of the previous 60 days, no specimen need be collected and tested.

Other proposed changes to this section (§ 26.24(a)(2)) would more clearly describe the full meaning of the currently required attributes of random testing. Some licensees who randomly tested only during weekday day shifts provided predictable gaps in testing. People working during evenings and on weekends knew they would not be tested. Workers who were randomly selected for testing, but did not happen to be on site at the time scheduled for specimen collection because they normally worked off site or worked a night or weekend shift, were deleted from the list of people to be tested that day and other workers who were present substituted in their place. Thus, not all workers had an equal chance of being tested. All testing personnel and employees must be made aware that tests are truly random and unpredictable, and therefore that unannounced tests may occur during any day or night duty hours. Predictable patterns of random testing are prohibited by the rule. The proposed rule changes would create no new random testing requirements, but would instead clarify currently existing requirements that random testing be unpredictable and conducted at various times during the day. As discussed in item number 4.6 of NUREG–1385, which points out that HHS's ''Medical Review Officer Manual'' suggests that random sampling procedures should permit no ''safe periods'' for any employee: ''Each work day should present each employee with a new opportunity of having to produce a sample. * * *''

A provision would be added to clarify that reasonable efforts must be made to

test persons selected for random testing. For persons off site and within a reasonable traveling time and distance, the NRC expects collection of specimens be completed as promptly as notification and travel can be accomplished. For other persons selected for random testing, the NRC expects that upon their return to the site they be promptly notified and tested under the provisions of § 26.24(a)(2) and that the test would be recorded as a random test.

A proposed amendment would provide flexibility to conduct for-cause tests (§ 26.24(a)(3)) no more than 2 hours for the alcohol part of the test and 8 hours for the drug part of the test following an indicated need for testing. This change is intended to accommodate situations where no collection personnel are on site and need to be called in or the individual needs to be transported to another location for testing. While it is in the best interests of both the licensee and the worker in this situation to collect the specimens as soon as possible, as currently required, more flexibility is appropriate. A shorter time is specified for alcohol because of the more rapid metabolism of this substance.

Other additions to this section would be clarification of the conditions that initiate a for-cause test and clarification that an MRO or other licensed medical person must determine the fitness for duty of an individual tested for cause before that worker may return to duty. Although the NRC considered amending the rule to clarify requirements concerning situations in which a worker may be potentially impaired from causes that would not be detectable by drug and alcohol testing, it believes the following guidance should suffice. Although impairment caused by factors other than substance abuse is usually not a violation of the FFD rule by the worker, it is the responsibility of the licensee to assure that no impairment, regardless of cause, threatens public safety.

The NRC has received, but declined to adopt, recommendations that this section be revised to authorize licensees to administer an ''alcohol-only'' test in certain situations. Under this recommendation, only a breath test would be required when conditions that directly indicate alcohol use, such as alcohol on the breath, create a reasonable suspicion that the person may have misused alcohol in violation of the licensee's fitness-for-duty policy. The NRC believes that allowing an alcohol-only test in these circumstances would be inappropriate. It is preferable to perform both an alcohol test and a drug test, whether the alcohol test is positive or negative, to fully investigate the individual's fitness for duty. However, if the alcohol test is negative and the individual is determined fit by a designated licensee representative qualified to make the determination, the individual could be returned to duty pending laboratory testing of the urine specimen and receipt of urinalysis results. The Commission believes that this provides an appropriate balance between assurance of a thorough inquiry and determination of fitness and reduction of the impacts caused by time away from the work station.

The requirements pertaining to follow-up testing (§ 26.24(a)(4)) would be clarified by incorporating the provisions of § 26.27 (b) (4) to make explicit that all people to whom unescorted access is reinstated under § 26.27(b) must be subject to unannounced and unpredictable testing for at least three years following reinstatement. The duration of followup testing is supported by research which indicates that chronic abusers of alcohol and other drugs usually need several years to recover from their habits. Under these proposed amendments, licensees would be required to adopt a program that is tailored to the individual's medical history and that meets these minimum requirements. These amendments are intended to clarify the current conditions under which licensees can reinstate unescorted access following a first or second violation of an FFD policy. A proposed requirement that the testing be unpredictable is added to conform the followup testing to the existing requirements for random testing.

The NRC proposes to add a fifth type of required chemical testing referred to as ''return-to-duty'' testing (§ 26.24(a)(5)). In its current form, the rule does not clearly state the Commission's intent that licensees should test personnel having unescorted access when they return to work after extended absences. The NRC staff is aware that most, but not all, licensees are already testing people when they return to their sites after extended absences. The proposed new § 26.24(a)(5) would require return-to-duty testing when workers seek to regain unescorted access to protected areas in two types of circumstances. First, workers seeking to regain unescorted access after having been denied access under the provisions of § 26.27(b) would be tested and a negative result obtained before access is restored. Second, a worker who seeks to regain access at a particular licensee's plant after an absence from the possibility of being tested under that licensee's FFD program for more than 60 days would have to be tested under this requirement. Provisions are made in the rule to lessen the impact. This proposed revision is also intended to clarify expectations regarding individuals selected for random testing who are away from the site and not available for testing. The NRC staff understands that some licensees are currently calling people in for random tests from long distances (e.g., a 2- to 4-hour drive each way, cross-country flights, overnight stays). Some licensees use mobile collection facilities or teams to travel to the persons selected for testing. The NRC staff is also aware that many licensees are routinely testing people such as utility headquarters staff, contractors, and consultants who come to the site only infrequently but may have access status. The new return-to-duty testing requirements and the revisions to the pre-access and random testing requirements (§ 26.24(a) (1) and (2)) are intended to provide licensees the explicit flexibility to adjust their testing programs to eliminate unnecessarily ''heroic efforts'' to test.

The 60-day period was chosen in order to be consistent with the current preaccess processing standards in NUMARC 91–03, ''Nuclear Power Plant Personnel Access Authorization Data Exchange Guidelines,'' dated October 1992. The industry guidelines provide that to be issued a badge in a situation where an individual has an existing access authorization, the individual must either be currently covered by an FFD program including random testing, or have satisfactorily completed preaccess drug and alcohol testing within 60 days before badging, and be subject to a behavioral observation program and an FFD program. The industry guidelines also provide that the individual's activities should be checked if a licensee or contractor/vendor employee had been away from a licensee, or approved contractor/vendor, behavioral observation program for more than 30 consecutive days. The industry guidelines also provide that suitable inquiry should be updated if reinstatement of access is requested for an individual who has been away from an FFD program for a period of 30 days or more.

For workers who have been absent from the possibility of being tested under the licensee's program for more than 60 days, any drug or alcohol test meeting Part 26 standards and performed within 60 days before the granting of unescorted access could serve as the return-to-duty test. The returning worker would have to obtain

a negative test result before returning to work unless he or she has no history indicating the use of illegal drugs or the misuse or abuse of legal drugs and has either had a negative result on a test meeting Part 26 standards performed within six months before the reinstatement of unescorted access or been covered by a program meeting Part 26 standards for two consecutive weeks during that six-month period. As was adopted for preaccess testing, tests performed by another licensee or under a testing program required by the U.S. Department of Transportation are examples of tests that would qualify as return-to-duty tests under this proposed revision. In such circumstances, the NRC would expect that licensees would use a dependable means of confirming that the person seeking access had actually been tested or been covered by another program. This could be accomplished, for example, by the electronic exchange of pertinent information among licensees using a computerized data base that the industry is currently considering.

Various proposed editorial changes to § 26.24(d) would leave its requirements essentially unchanged from the amendment to this paragraph published by the NRC on August 26, 1991 (56 FR 41922).

The NRC is proposing a new paragraph (§ 26.24(e)) that would require that licensees keep to a minimum the time between notifying individuals to be tested and the actual collection of specimens. This requirement is intended to eliminate a significant vulnerability (time) in the testing process. Time is very important to persons attempting to avoid detection. Time enables them to flush themselves, obtain surrogate specimens, or obtain materials to dilute or adulterate their specimens. For example, an investigation was conducted to determine why two adjacent sites, drawing their workforce from the same geographic area, had significantly different positive rates for random tests. It was determined that different time intervals between notification and collection were the cause of the discrepancy. The licensee with the low rate had a 2-hour notification policy not vigorously enforced; the licensee with the higher rate had a 15-minute notification policy which it aggressively enforced. A DOT study showed an increase in the positive rate when there was little or no prior warning of specimen collection. Whereas ''normal'' random testing of motor carrier personnel was positive at a 2.5% rate, roadside stops produced at a 4.8% positive rate. In response to that experience, DOT revised its rule to require the person, upon notification, to immediately proceed to be tested. NRC inspections and surveys indicate that some licensees keep workers on the job and test them only at the end of a shift even though they have been notified that they are to be tested hours before. In other cases, licensees permit delaying tactics that result in lengthy periods between notification and testing. In both of these cases, alcohol can be metabolized below detectable levels and the person can flush himself or herself, to some degree, of drugs. Some licensees release workers for tests in a manner that allows them ample opportunity to obtain materials that might subvert the test results (e.g., adulterants or surrogate samples kept in a locker or vehicle). The NRC understands that operational necessity may prevent the tested person from reporting immediately and that being escorted between notification and test may be an unreasonable burden. However, several licensees have reduced the notification time by using the supervisor to coordinate the worker's availability for testing and withhold notification until the individual must proceed to the collection site. Licensees report that this approach does not cause any burden or inconvenience; it is merely a different way of doing things. One licensee reported that it escorted persons selected for random testing without giving them prior notice, which produced a low number of questionable specimens (NUREG/CR–5758, ''Fitness for Duty in the Nuclear Power Industry: Annual Summary of Program Performance Reports,'' CY 1994, Volume 5, page C–5). Therefore, the Commission expects that licensees will assure that opportunities for subverting the test are eliminated as much as is practicable.

Section 26.24(e) (paragraph (f) in the proposed rule) currently requires that MROs' review of test results be completed and licensee management notified of those results within 10 days of the initial positive screening test. The intent of this requirement is to ensure that results are obtained within a reasonable time after specimen collection. Industry experience has indicated in some cases that the current requirement is impractical. In order to make this requirement more effective across the industry, the NRC is proposing to require that MROs' review of laboratory test results be completed and licensee management notified ''as soon as practicable'' after specimen collection and no more than 14 days after the collection of a specimen. Because many licensees conduct on-site screening tests, the ''collection of a specimen'' standard would establish a more consistent and controllable time line than ''initial screening test.'' The licensees conducting initial screening tests on site would have the same amount of time to review the HHS-certified laboratories' reports as do those licensees not conducting onsite testing. Experience has shown that the majority of certified laboratories take only 1 to 3 days from receipt of a specimen to screen and confirm tests; isolated exceptions are usually caused by testing for 6-acetylmorphine (6–AM), formerly referred to as 6-monoacetylmorphine (6–MAM), and occasionally by unusual technical problems. The Commission believes that most test results should be known to an MRO within 5 to 7 days from specimen shipment to the laboratory. The Commission has no great concern where there is a legitimate technical basis for a short, reasonable delay by the laboratory, for example, where a specialized low-volume test, such as 6–AM, is done twice a week rather than every day. This revision would require, therefore, that MROs must advise licensee management of available test results and of the progress of the review if the review has not been completed within 14 days of the specimen collection. While slightly relaxing the test result reporting requirements, the NRC would still expect MRO reviews to be completed as soon as practicable, and, in accordance with a proposed clarification of Section 2.9(c) of Appendix A, that the MRO notify management immediately after the determination of a positive test result or other violation of FFD policy.

The NRC also proposes to clarify § 26.24(f) to require that the MRO must report all violations of the licensee's FFD program to management in writing and in such a manner that confidentiality is ensured. This requirement is also proposed as new paragraph (i) in Section 2.9 of Appendix A, which addresses reporting requirements and the review of test results. This provision is simply a clarification of existing practice and an adoption of a change made to the HHS guidelines in June 1994, and would not place a significant burden on licensees since it would require that only FFD program violations, rather than all test results, be reported in writing to management. Requiring that all determinations of FFD program violations be submitted in writing will assist in preventing reporting errors. Furthermore, although it is currently common practice to submit such

information in a manner that ensures confidentiality, the NRC believes that due to the sensitive nature of the information this provision should be explicitly required, as HHS does in its guidelines.

The NRC proposes to modify § 26.24(g) with several editorial changes to clarify requirements for performing screening, confirmatory, and blind performance tests at HHS-certified laboratories. These changes serve to clarify and explicitly state the currently existing practice by licensees. In addition, this paragraph and § 26.24(d) would require licensees to ensure that all collected specimens are tested and that laboratories report results for all specimen tests performed. This provision serves to clarify existing requirements, would be a companion to the change to § 26.24(f), and would be an adaptation of a change made to the HHS guidelines in June 1994, in which HHS required written reports on all specimens, both positive and negative, to ensure that all specimens had been tested and all results reviewed by the MRO.

The NRC is proposing to require that a confirmatory test for alcohol be performed if the screening test indicates a blood alcohol concentration of 0.02 percent or greater instead of 0.04 percent as currently required (§ 26.24(h)). In cases where the confirmatory test indicates a blood alcohol concentration between 0.02 percent and 0.04 percent, the result would have to be forwarded to the MRO for review and, if appropriate, back calculation (see new Section 2.9(h) of Appendix A). The purpose of this procedure would be to determine whether the tested person had a BAC of 0.04 percent or greater, indicating a violation of the FFD rule, at any time during the work shift.

Section 26.24(h) currently provides for a blood test to be administered if the tested person demands ''further confirmation'' of a positive confirmatory test for alcohol. The NRC is proposing to revise the regulatory language to better reflect the purpose of blood tests in that they would be used for providing additional information that could be considered during an appeal pursuant to § 26.28. Furthermore, licensees would be required to ensure that the blood specimen is drawn promptly after the confirmatory breath analysis. The result of the gas chromatography analysis of the blood specimen need not necessarily be measured against the alcohol cut-off level. Instead, the MRO should determine in these cases whether it is appropriate to extrapolate back in time to estimate the highest BAC that the worker had while on duty. In a related matter, the NRC desires data on the number of times blood specimens have been drawn and any instance where the BAC results were overturned. Approaches licensees have taken to maintain this capability and the associated costs would be useful for evaluation of possible future changes in this requirement.

In another revision to this section, the NRC is proposing a new paragraph (§ 26.24(i)) to address cases where an individual has a medical condition that makes collection of breath, blood, or urine specimens difficult or hazardous. The MRO, in consultation with the worker's treating or private physician, would be authorized to determine a method of specimen collection provided the methods chosen can achieve comparable results. The Commission anticipates that these occasions, which would include, for example, post-accident testing of an injured individual, would be extremely rare.

In connection with the blood tests which may be performed under § 26.24 (h) and (i), the NRC notes that the Occupational Safety and Health Administration (OSHA) has determined that some employees face a significant health risk as the result of occupational exposure to blood and other potentially infectious materials because the materials may contain certain bloodborne pathogens. OSHA published a final rule in the Federal Register on December 6, 1991 (56 FR 64004), that establishes requirements applicable to all occupational exposure to blood or other potentially infectious materials. This coverage appears to include personnel involved in the collection and handling of blood specimens collected pursuant to the NRC FFD rule. The OSHA rule requires employers that have one or more employees with this occupational exposure to take several measures to minimize the exposure. These measures include determining employees' potential exposure, establishing a written Exposure Control Plan designed to eliminate or minimize employee exposure, and taking various precautions to prevent contact with blood in the course of work. The NRC anticipates that licensees will evaluate their responsibilities under this OSHA rule.

Section 26.25 Employee Assistance Programs (EAP)

The NRC proposes to revise this section by replacing the permissive ''should'' with the mandatory ''must'' to clarify its original intent that licensees design their employee assistance programs to achieve early intervention and must provide for confidential assistance. While actually achieving early intervention in all situations where employees' problems could adversely affect on-the-job performance may not be possible, it is reasonable to expect that all licensees' EAPs be designed to achieve this goal and not include obvious impediments to early intervention. This would assure that self referrals are kept confidential and do not result in punitive action. The NRC wishes to emphasize that Employee Assistance Program staff shall inform licensee management when a person constitutes a hazard to himself or herself or others and that self-referral does not influence in any way the determination of an FFD violation.

Section 26.27 Management Actions and Sanctions To Be Imposed

The NRC proposes changes throughout this section to require the same sanctions for alcohol violations as currently exist for use of illegal drugs. Explicit sanctions were not contained in the original rule because the NRC wished to study the matter further. As a result of further study, the NRC concludes that impairment caused by alcohol abuse creates a safety risk that is fundamentally similar to the risk posed by the use of illegal drugs. Both types of abuse involve violation of explicit licensee policies, are unacceptable in the nuclear power industry, and should strongly be discouraged. Currently, licensees vary widely in their responses to alcohol abuse with sanctions ranging from a three-day suspension to termination. The FFD rule's lack of explicit minimum sanctions concerning alcohol has created problems for many licensees in negotiating and defending sanction decisions. Creating minimum sanctions for alcohol violations that are equal to those of illegal drugs will assist licensees in dealing with these situations while sending a strong message to workers about the risks involved in abusing alcohol. As discussed under the proposed changes to § 26.20, it is important for licensees to ensure that their employees understand the several factors related to alcohol consumption that could result in a violation of the licensee's FFD policy.

Section 26.27(a) would be revised to clarify certain aspects of the requirements for the written statement obtained from persons seeking unescorted access and for the conduct of suitable inquiries. In both cases, the revisions would require licensees to determine whether the person has a history of substance abuse or has previously violated a licensee FFD

policy. These changes are being proposed with the intention of requiring the gathering of more complete information on the backgrounds of applicants for unescorted access, particularly as to potential problems with the abuse of alcohol. In addition, the history, except for removal from activities within the scope of this part due to actions taken as the result of an FFD policy, would be limited to the last 5 years. It should also be noted that the proposed revisions are intended to ensure consistency between the suitable inquiry aspects of both the access authorization rule and the FFD rule and that one suitable inquiry for each worker should be sufficient to fulfill the requirements of the two rules. As in the Access Authorization program, ''best efforts'' requirements of § 26.27(a)(3) are accomplished through contacts with previous employers. In addition, fitness history need not be obtained for those covered by other programs or absent for 30 days or less.

The NRC has received recommendations that a standard form be available for all licensees' use in performing suitable inquiries into individuals' backgrounds as required by this section. The NRC will defer to licensees should they wish to develop and use this type of form.

There have been a few reports of instances where a contractor or vendor employee with concurrent unescorted access to several power reactor sites had tested positive and that information was not shared with the other licensees. Although the individual was denied access by the testing licensee, the unescorted access status was continued by the other licensees. The NRC considered requiring licensees to assure that such notifications are made or to make periodic checks with other licensees and contractor employers but believes that the licensees' procedures to implement the access authorization rule (10 CFR 73.56) should facilitate the sharing of the information.

Section 26.27(b)(1) would be revised to clarify several points. Applicants would be added to the types of people to be denied unescorted access if their fitness is questionable. Violations of FFD policy, such as refusals to test or subversion of the testing process, is added as a basis for denial. The successful resolution of the impairing or questionable condition has been added as a condition to assignment of duties, and a more systematic review of the fitness of all personnel being returned to duty whose fitness had been deemed questionable would be required. This action is being taken because there have been several instances in which licensees did not remove or delayed removal of workers whose fitness was questionable and ''automatically'' returned workers to duty without a test or adequate determination of fitness. Companion changes are proposed for § 26.3, concerning medical determination of fitness, and § 26.24(a), regarding for-cause and return-to-duty testing.

The NRC proposes various amendments to § 26.27(b) (2) and (3) [formerly one paragraph (2)]. The first amendment would more clearly specify that confirmed positive drug and alcohol testing determinations are to be considered violations of FFD policy. Another amendment would clarify that people who are suspended because of policy violation are still to be covered by the licensee's FFD program with respect to behavioral observation, chemical testing, and sanctions for violations and that a positive test result during the assessment or treatment period would constitute a second positive test. In a related matter, the NRC expects that, in those rare cases when an individual is randomly tested before the results of a previous test are known to the individual and both results are positive, the licensee will consider whether the second test result is likely to be the result of the use indicated by the first test and, if not, declare the second test to be a second positive and take appropriate action. As amended, this paragraph would also require that a person who is reinstated following a policy violation must successfully complete a return-to-duty test and be subject to subsequent follow-up testing.

Section 26.27 (b) (4) and (5) (formerly paragraphs (3) and (4)) would be revised to fully recognize the abuse of alcohol as an FFD violation. The NRC also proposes to revise paragraph (b)(5) to more directly express its intention that a person must be determined to be fit to safely and competently perform activities under Part 26 by an appropriate licensee manager and the MRO or other qualified physician before being returned to those activities. Like other proposed amendments to this section, these amendments would be intended to elevate the importance given to licensee decisions regarding unescorted access reinstatement following FFD policy violations.

Section 26.27(c) would be clarified so that the exact act that violated the FFD policy is recorded and provided in response to an inquiry. Subversion of the testing process would be added to the examples of violations that must be recorded and provided in response to a suitable inquiry. Each of these examples of employee activity would be a violation of the licensee's FFD policy. A new provision would require that any attempt to subvert the testing process must result in denial of unescorted access for a minimum of three years which would be consistent with the sanction required by § 26.27(b)(3) for a second violation of a licensee's FFD policy. This sanction was chosen because the NRC wishes to convey the seriousness of such acts. Lastly, paragraph (c) would be revised to allow licensees to dispose of records five years following denial of any access authorization resulting from the activity. These revisions would establish a basis for consistent minimum treatment of these violations across all licensee programs for employee activities that have resulted in varying licensee response during the first five years of FFD program operation.

The NRC also proposes to revise paragraph (d) of § 26.27 to direct licensees to treat NRC contractors similarly to NRC employees if a licensee believes an NRC contractor to be under the influence of any substance or otherwise unfit for duty.

The NRC is aware that the requirements of the American with Disabilities Act of 1990 (ADA) may have implications for licensees' compliance with the requirements of § 26.27. The employment provisions of the ADA, which became effective on July 26, 1992, require employers with 25 or more employees to protect disabled persons from discrimination in the workplace. People who have previously been addicted to drugs or alcohol but who have been successfully rehabilitated, or can demonstrate a successful period of abstention or negative test results, are among those that the ADA protects. It is the NRC's understanding that a person who has casually used drugs in the past but was not addicted to those drugs cannot claim the ADA's protection. The Act specifically excludes from its protection employees or applicants who are current users of illegal drugs. The Act also specifies that covered entities may require employees to comply with the FFD regulations of the NRC to the extent such employees are covered by these regulations (Sec. 104(c)(5)(B), Pub. L. 101–336, 42 U.S.C. 12114; see also 29 CFR 1630.16(b)).

The Equal Employment Opportunity Commission has published the Americans With Disabilities Act Technical Assistance Manual which somewhat clarifies the meaning of ''current use'' of illegal drugs. According to the Manual, ''current use'' is drug use that has occurred recently

enough to justify an employer's reasonable belief that involvement with drugs is an on-going problem. For purposes of taking an employment action, current drug use is to be determined on a case-by-case basis and is not limited to the day of use or recent days or weeks. Clearly, when determining whether a particular person is a current user of drugs, and therefore not eligible for ADA coverage, the required amount of time that must have elapsed since a person's last use of drugs must depend to a large extent on the nature of the particular employment context in which an employment action is being considered. This is confirmed by the Manual when it states that an employer may take an employment action against an employee with a history of illegal drug use if it can demonstrate that the individual poses a direct threat to health or safety because of the high probability that he or she would return to illegal drug use.

The NRC's policy, as reflected in 10 CFR Part 26, is that until a person can show that he or she has abstained from substance abuse for at least three years, there is a continuing probability of resumption of substance abuse that is too high, given the exceptional safety concerns of the nuclear power industry. This has been supported by medical evidence and clinical experience. Given the heightened safety concerns of the nuclear power industry, it is the NRC's view that a person is a current user and not a disabled person under the ADA because of drug or alcohol abuse until that person has demonstrated abstinence from substance abuse for a minimum of three years after a positive test. Even when considered disabled because of drug or alcohol abuse, a person covered by a program pursuant to 10 CFR Part 26 is by terms of the Americans With Disabilities Act still subject to the NRC's fitness-for-duty regulations.

Section 26.28 Appeals

The NRC is proposing amendments to the right to appeal granted by § 26.28. This section currently requires that people subject to the rule have an opportunity to appeal positive drug and alcohol test results. In keeping with revisions to several other sections that would be intended to counter testing subversion, an amendment would extend this right to appeal to all determinations of FFD violations.

The NRC proposes to clarify that the right to appeal includes applicants for unescorted access. The NRC understands that some licensees did not provide an appeals process to persons who tested positive on pre-access tests. The factors that could produce false positives among licensee employees and contractors (e.g., administrative errors, medical prescriptions) are equally likely to occur during pre-access testing of applicants for unescorted access. (Note that a change to § 26.24 will permit licensees to consider any test meeting the Part 26 standards as a pre-access test. Those standards include the appeals process under § 26.28, and apply to any test that the licensee plans to subsequently use as a pre-access test.) If applicants for unescorted access are not provided an appeals process, it is possible that some of them will be effectively barred from the industry based on test results erroneously determined as positive. Providing applicants an opportunity to appeal the validity of the test result would also enhance program credibility.

The NRC also proposes to clarify the contents and purpose of the notice to the individual determined to have violated an FFD policy, clarify that the review process must be objective and impartial, clarify that the individual may submit additional relevant information, extend appeal rights to applicants for access, and assure that relevant records are corrected if an appeal is successful. The NRC understands that, in some cases, the individual did not understand the purpose of the appeal process. The NRC also understands that, in many instances, persons responsible for the initial determination were conducting the review. The NRC believes that the effectiveness of the FFD program depends, to a large extent, on the perception by the workforce that the program is fair and worthy of their support, and that all reasonable efforts are being made to ensure that any decisions that could affect their careers are fair and based upon information that is complete and accurate and forms a sound basis for the decision. The use of even-handed, fact-finding procedures should ensure that incorrect determinations that could undermine the quality of a licensee's workforce and, thereby, be counter to the interests of safety, will not stand uncorrected.

As a related concern, the NRC has been informed that some licensees have required individuals to pay for the reanalysis of their specimen and the analysis of their split sample when pursuing appeals. Having to pay for the reanalysis can be expected to obstruct the individual's exercise of the right to appeal the licensee determination of policy violation as granted by this section. The NRC, therefore, considers requiring persons covered by the rule to pay for reanalysis of their specimen or analysis of the split sample to be inappropriate. However, requiring the person to pay after the fact should these subsequent tests also be positive would be an acceptable measure to control unwarranted appeals.

Section 26.29 Protection of Information

The NRC proposes to amend this section to clarify that contractors and vendors who legitimately seek information for unescorted access decisions by licensees are authorized to obtain this information. Contractors and vendors were unintentionally omitted from this provision in the original rule.

A second proposed amendment would allow disclosure of personal information collected in compliance with the rule to presiding officers of judicial or administrative proceedings that are initiated by the person who is the subject of the information. The purpose of this amendment would be to allow disclosure to, for example, state agencies investigating whether the firing of an employee was justified in order to determine unemployment compensation entitlements. This disclosure would be permissible as long as the subject employee initiated the proceeding.

Section 26.29(c) would be moved from current § 3.2 of Appendix A and amended to clarify that licensees must provide to the subject individual, upon written request, copies of all records pertaining to violations of FFD policy, including test results, MRO reviews, and management determinations pertaining to the individual. Some licensees have interpreted this section in ways that make it difficult for workers to obtain their records. For example, some licensees have allowed the tested persons to see the documents but have not provided them copies of the documents. This is particularly difficult in the case of contractor employees who may no longer reside in the plant area. These actions are contrary to the NRC's intent that persons covered by the rule have full and convenient access to documents pertaining to employment actions taken in response to the results of tests conducted under this rule.

Section 26.70 Inspections

The NRC is proposing to revise this section to clarify its intent that FFD service contractors must make available for inspection by duly authorized representatives of the Commission documents, records, and reports related to the FFD services they provide to licensee, contractor, or vendor FFD programs. In some instances, contracted service providers and testing laboratory

personnel have been reluctant to provide documents to NRC inspectors.

Section 26.71 Recordkeeping Requirements

The proposed amendments to this section would clarify the NRC's intent that licensees retain relevant records pertaining to determinations of FFD policy violations, not just records of confirmed positive test results. These records are to include those related to personnel actions following policy violation determinations (such as refusals to test and subversion of the testing process) as well as those pertaining to the testing process that detects the violations. This revised wording would clarify licensees' recordkeeping responsibilities as well as ensure that people covered by the rule would have sufficient access to documentation of personnel actions that can substantially affect their work status.

The proposed amendments to this section would also reduce the reporting frequency for program performance data from semiannually to annually and add the number of subversion attempts by type to reporting requirements to support the greater emphasis on subversion elsewhere in the proposed rule. The NRC has considered, but decided not to adopt, a recommendation that utilities with more than one site submit only a single semiannual program performance report for all sites. Such consolidation of data would prevent analysis of site specific performance and NRC inquiry into obvious inconsistencies such as large numbers of positive results at one site and no positives at the second or neighboring site.

Despite obtaining the FFD programmatic performance information that has been submitted pursuant to this section for the five years of program operation, the NRC believes that additional types of information could be useful in fulfilling its responsibilities of overseeing licensees' FFD programs and formulating public policy. As noted in the introduction to this notice, several parties have recommended that the NRC consider obtaining certain types of information in addition to those currently required by this section or now being proposed for inclusion under § 26.73. Such information could include the number and nature of grievances, arbitration proceedings, and lawsuits stemming from FFD-related issues; information related to licensees' EAP programs including types of services provided, whether such services are provided by licensee or contractor personnel, employee-to-counselor ratios, the number of personnel who are admitted to EAP programs by self referral and by supervisory referral, the reported and diagnosed problems, and overall results of EAP programs; and laboratory testing results that are being provided to MROs and what problems MROs are having in interpreting test results and making judgments as to whether FFD policy violations have occurred.

Having access to this information would enable the NRC to gain a clearer and more detailed understanding of the actual operation of the programs. This information would also be useful for purposes of revising the regulation or providing guidance so that the general performance objectives stated in § 26.10 can be better achieved. The NRC, therefore, seeks public comment as to whether § 26.71(d) should be revised further to require that these types of information be collected and analyzed by licensees and submitted to the NRC. The NRC also seeks public comment as to whether the NRC should develop a management information system similar to that promulgated by DOT and its operating administrations (58 FR 68194 through 68285; December 23, 1993).

The NRC wishes to acknowledge the usefulness of lessons learned and program initiatives reported by many licensees that are summarized in NUREG/CR–5758 each year for licensees to consider and use to improve their programs and avoid common problems.

Section 26.73 Reporting Requirements

The current rule requires that licensees inform the Commission of significant FFD events and describes examples of significant events involving acts by licensed operators and supervisors that must be reported to the NRC. Item 10.1 of NUREG–1385 emphasized that the NRC expects licensees to exercise prudent judgment on whether or not unusual situations should be reported and that the significant events were not limited to the examples contained in the rule. However, the NRC understands that many significant events that would be useful for formulating public policy or that the NRC should respond to in a timely fashion have not been reported because licensee management decided not to report the event unless it was specifically required by the rule. Therefore, the NRC is clarifying that significant events are not limited to those listed and provides additional examples. One of the proposed amendments would add FFD program personnel, in keeping with clarifications to the scope of the regulation under § 26.2 (a), as a class of individuals whose improper acts would be reportable. Another proposed amendment would expand an example to include that any violation of FFD policy (e.g., possession of illegal drugs, refusal to take a test, attempt to subvert the testing process) by a supervisor, licensed operator, or FFD program personnel must be reported in contrast to the current example which describes reporting only confirmed positive test results.

Section 26.80 Audits

This section would be revised to permit licensees some discretion in conducting audits and to address a petition for rulemaking (PRM–26–1) filed on January 19, 1994. Rather than emphasizing compliance with a requirement to conduct an audit at a fixed annual frequency, licensees would be responsible for determining the appropriate frequency, scope, and depth of auditing activities within a 3-year period based upon a review of program performance indicators. These performance based audits would be conducted so that all program elements are adequately covered at least once during the 3-year period. In addition, the interval between audits of a program element would be relaxed to 36 months. The NRC is specifically interested in public comments on program performance indicators in addition to those contained in the text of the proposed amendment to the rule and whether they should be added to the rule or included in a guidance document. This relaxation of audit requirements would not be extended to contractors and vendors, whether they are implementing any portion of a licensee's program for their employees under the provisions of § 26.23, or providing contracted FFD services, such as specimen collection, testing, and MRO reviews. The amendments to this section would also clarify that licensees must continue to audit their HHS-certified laboratories on an annual basis.

The NRC recognizes that FFD is an evolving discipline and that new issues and problems will continue to arise. In some cases, turnover of FFD program personnel further exacerbates the problems. There is a frequent turnover in the contracted services, such as specimen collections, MRO reviews, and EAP services. Licensee audits have found many problems that were associated in some way with personnel changes. A proposed amendment to this section would require licensees to audit program elements that may potentially be affected by significant changes in personnel, procedures (e.g., specimen collection, testing, and MRO reviews

and reports), or equipment as soon as reasonably practicable but no later than 12 months after the changes. The purpose of these focused audits would be to assure that the change has not adversely affected the operation of the particular program element or function in question. One of the clear lessons of the early period of this rule's implementation during 1989 to 1991 was that licensees that performed early pro-active audits of their FFD programs were able to more easily and effectively correct programmatic problems and achieve effective program operations than those that waited the full nominal 12-month period before auditing their programs. Accordingly, this aspect of the performance based audit program would help ensure that whatever programmatic problems that may result from significant changes in personnel, procedures, or equipment will be detected and corrected on a timely basis.

Licensee audits of HHS-certified laboratories continue to find problems. In one case, the licensee's auditors had found sufficient problems in the first part of an audit to issue a stop-work order. The laboratory subsequently lost its HHS certification. Therefore, based on experiences gained to date, the NRC continues to believe that licensees must continue to audit at least annually the quality of contractor- or vendor-performed program elements, particularly when such activities are provided off site or are not under the direct, daily supervision of the licensee.

With respect to the petition for rulemaking, which was filed with the Commission by Virginia Power and assigned Docket No. PRM–26–1 on January 19, 1994, the petitioner requested that the Commission's regulations be amended to relax the existing mandatory audit frequency and require each licensee to audit its FFD program nominally every 24 months instead of nominally every 12 months with additional audits if performance warrants.

The petitioner requested the change based on its contention that the present requirement is resource intensive but of marginal importance to safety. The petitioner's further basis was that the industry's performance in ensuring a drug-free workplace has been very effective, the frequency and extent of auditing should be based on the need to assess performance, and that the licensees need increased flexibility to concentrate available audit resources in areas of observed weakness rather than mandatory audits of marginal safety significance. The petitioner stated that such a change would be consistent with audit requirements concerning operational safety, and that the blind performance test procedures and the quality controls required by Section 2.8 of Appendix A to 10 CFR Part 26 provide sufficient controls to ensure continued reliability and accuracy of the chemical testing. The petitioner indicated that its proposed change is not intended to preclude additional or more frequent audits if performance trends indicate additional overview is necessary.

The NRC believes that its proposed changes would go beyond that requested by the petitioner in that the interval for auditing the FFD program would be 3 years instead of 2, and the actual interval of the audits would be based more on need, as demonstrated by performance, than at a fixed interval. Therefore, adoption of the proposed change by the NRC would grant the petitioner's request with respect to audits of licensee programs. However, the NRC believes that licensees must continue to vigorously audit contractor/vendor-performed program elements, and has maintained the existing frequency of these audits.

The NRC understands that licensees have assumed that the term ''audit'' in Part 26 means a quality assurance (QA) audit that conforms to their normal audit program requirements and American National Standards Institute (ANSI) standards, such as ANSI N45.2, ''Quality Assurance Program Requirements for Nuclear Facilities,'' ANSI N45.2.12, ''Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants,'' ANSI N45.2.23, ''Qualifications of Quality Assurance Program Audit Personnel for Nuclear Power Plants,'' and ANSI N.18.7, ''Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants.'' The NRC does not require that these audits be performed by the QA organization in accordance with the QA program commitments for the conduct of audits. As stated in the current rule, the NRC expects that these audits must be conducted by individuals who are qualified (technically competent) in the subject(s) being audited and are independent of the program (to assure objectivity and no conflict of interest). At the licensee's option, the QA organization may perform, lead, or assist in these audits.

The following discussion describes the changes to Appendix A to Part 26 that are being proposed and the reasons for the changes.

Section 1.1 Applicability

Numbering changes to this section are being proposed to ensure uniform style and format throughout the rule.

Section 1.2 Definitions

Proposed changes to this section include deletions of defined terms that are either redundant with definitions in § 26.3, were moved to § 26.3, or are clear in the context of this Appendix. A proposed revision would define ''limit of detection'' (LOD) which is now used in the rule. Another proposed amendment would delete the term ''permanent record book.'' This change would make the Appendix consistent with recent amendments to the HHS guidelines and the Department of Transportation FFD regulations that eliminated the requirement for a permanent record book. Because HHS no longer requires a permanent record book, the NRC proposes to remove requirements for a permanent record book throughout the rule. The permanent record book was originally required based on the belief that such a book was necessary to ensure that critical information regarding collection and testing of each individual specimen was recorded. However, the FFD drug testing program specified in Part 26 requires that all information on individual tests be recorded on the chain-of-custody form and other forms and requires that all information related to determining violations be retained for five years. Therefore, there is no compelling need to maintain a separate longstanding record book. Eliminating this requirement reduces the regulatory burden on licensees and increases the efficiency of licensee drug testing programs (because the time taken to enter information into the record book while the testee waits is eliminated). The elimination of this requirement does not preclude licensees from making their own determination of the advantages of the use of a permanent record book and deciding to continue to maintain one. A definition of ''limit of detection'' has been added to support some of the several proposed changes intended to cope with subversion of the testing process and to protect individuals from incorrect allegations of such attempts.

Section 2.1 The Substances

The NRC proposes to amend this section to include return-to-duty testing and to clarify that when a licensee tests for any illegal drug during a for-cause test or analysis of a suspect specimen (currently permitted by the rule), the licensee may consider any detected

drugs or metabolites (as currently authorized in section 2.7(d) of this Appendix for samples suspected of adulteration or dilution). The NRC deems it appropriate, in these particular instances, where reasonable suspicion of an FFD problem exists, to allow close scrutiny at the discretion of the licensee. The licensee continues to be responsible for assuring that the results establish a valid basis for any action taken.

The NRC has given consideration to adding additional substances to the panel of drugs to be tested (e.g., benzodiazepines, barbiturates, and/or LSD) but has chosen not to add substances at this time. In the interests of developing and maintaining a coherent and well-organized drug testing program, the NRC anticipates continuing to follow the lead set by HHS in its guidelines. HHS reviews the panel of drugs from time to time from a national perspective. At this time, the NRC prefers to have any new additions to the minimum required drug panel dependent on HHS first adding substances to its panel of drugs to be tested. However, should the interest of public health and safety indicate a need to add substances to the drug panel, the NRC will take appropriate, timely action. The NRC continues to expect a licensee to consider any localized patterns of substance abuse when designing its FFD program, as required by § 26.24(c).

Section 2.2 General Administration of Testing

Section 2.2(a) would be amended to clarify that licensees may dispose of chain-of-custody forms associated with FFD policy violations after 5 years and need not retain chain-of-custody forms recording no FFD violations or other anomalies after appropriate summary information has been recorded for program administration purposes. Licensees recently pointed out that current rule does not permit destruction of these records and that they have started to accumulate an appreciable volume of files. The retention of records for 5 years following termination of unescorted access would provide appropriate records for responding to background investigation inquiries while reducing the storage burden on licensees. Proposed modifications to section 2.2(d)(4) would clarify that the optional blood test for alcohol misuse is intended for use in a subsequent appeal of a confirmed positive alcohol test. By asking for a blood test, the individual is asking for information that can be used to appeal a licensee's determination of an FFD policy violation.

Section 2.3 Preventing Subversion of Testing

The proposed amendments to this section would clarify the individuals for whom appropriate background checks and psychological evaluations are required and would reduce the required frequency for those activities from every three years to every five years. These changes were made in response to licensee experience and for consistency with generally accepted security practices for reinvestigations into reliability and trustworthiness. This section also contains clarifications that would conform with proposed revisions to § 26.2 that would clarify the Commission's original intent that FFD program personnel responsible for the administration of testing would meet the highest standards for honesty and integrity and be under the drug and alcohol testing requirements of the rule. These additions specify that testing of FFD program personnel shall, to the extent practicable, be done by personnel independent of the FFD program. Rather than describe in the rule how this requirement should be implemented, the NRC recommends that the random selection process, specimen collection, and testing services could be considered for performance by licensee employees specifically qualified for these infrequent duties, persons under contract to meet this requirement, or an exchange of services arranged among sites or utilities in the same geographical area. Alternatively, if a licensee maintains FFD programs both on site and at corporate headquarters, the FFD personnel who administer the program at headquarters could administer the testing of on-site FFD personnel and vice versa.

This requirement is intended to reduce the possibility of FFD program personnel being responsible for testing themselves or their close colleagues. Unless otherwise specifically covered by the rule, personnel selected to test FFD program personnel would be independent of the administration of the FFD program to the extent practicable.

Section 2.4 Specimen Collection Procedures

The NRC proposes a number of changes in this section to increase the clarity and consistency in the wording of the rule. In addition to minor editorial changes, the NRC proposes to clarify that there is no requirement for the courier's signature to be included on the chain-of-custody form (§ 2.4(d)). Because specimens are sealed in packages that would indicate any tampering during transit to the laboratory, and couriers, express carriers, and postal service personnel do not have access to the custody and control forms, there is no need for such personnel to document the chain of custody for the package during transit. This is in keeping with standard forensic laboratory procedures and would streamline the specimen transportation process. This is also consistent with a recent revision to the HHS guidelines.

In regard to suggestions that the NRC specify actions to be taken if there is a break in the chain of custody, the NRC is aware that the Department of Transportation and HHS have published guidance that addresses the proper handling of breaches in the chain of custody in the transportation industries. The NRC believes this type of guidance is not necessary in the rule but expects that licensees would take action to discover and correct problems with the custody and control of specimens. Licensees should be aware that, when actual breaks in a specimen's chain of custody are detected and confirmed, the test result associated with that specimen must be invalidated. The NRC notes that judicial rulings indicate that minor ''administrative'' problems should not be considered breaks in the chain of custody. Examples include failure to include a middle initial or one digit of a social security number being incorrect, which are among the many techniques used in attempts by individuals to invalidate tests. Another ''administrative'' example found by the courts not to be a break in the chain is the collector and donor leaving a sealed specimen bottle unattended for approximately 1 minute with reasonable measures in place to conclude that no person had access during that period. This should not be interpreted to mean that the courts will accept sloppy collection procedures. The Commission expects that licensees will be sufficiently diligent and attentive to detail in this matter. The NRC would also note that licensees that test urine specimens for the five drugs specified in Appendix A to Part 26 at the specified concentration levels can use the OMB-approved Federal Drug Testing (chain-of-custody) Form (OMB Number 9999–0023) developed by the Department of Transportation and HHS and published in the Federal Register on August 19, 1994 (59 FR 42996). Licensees that test for additional drugs or use cutoff levels different than established by HHS in its laboratory certification program may not use the OMB approved form, but should use a ''look alike'' form.

That the collection site person shall note on the chain-of-custody form any

unusual behavior or appearance of a person being tested remains a requirement of Section 2.4(g)(9). The NRC has noted and considered the privacy considerations associated with this requirement and continues to believe that the need to take note of such behavior or appearance is an appropriate part of the testing process. Clarification to Section 2.4(f) would assure that a specimen of questionable validity would constitute a reason to believe the individual may alter or substitute a specimen.

In accordance with HHS Guidelines, the NRC proposes to eliminate the directive that tested individuals be provided an opportunity to set forth on the chain-of-custody form information concerning medications taken or administered in the past 30 days (Section 2.4(g)(4)). The availability of such information does not eliminate the need to do a confirmatory test on an unconfirmed positive screen test result. This information becomes useful only at the point at which the MRO reviews a confirmed positive test result. It is at this stage, when this information can be conveyed by the tested individual directly and confidentially to the MRO, that information about medications the person may be using or has used becomes germane to determining whether a fitness-for-duty policy violation has occurred. Eliminating the opportunity for the tested individual to provide this information on the chain-of-custody form would enhance the individual's privacy interests by precluding the chance of any testing program or licensee personnel other than the MRO learning of the individual's use of medication.

The NRC proposes to amend Section 2.4(g)(10) to allow licensees to have an individual, other than a collection site person, accompany an individual into a rest room not in the designated collection site if the designated collection site is inaccessible. The NRC also proposes to amend Sections 2.4(g)(15) and 2.4(g)(24) to allow licensees to have an individual, other than a collection site person, observe the collection of a specimen whenever there is reason to believe the individual may have altered or substituted the specimen. However, the requirement that the individual be of the same gender as the employee still exists. This proposed change is based on NRC's belief that it not always possible, under all circumstances, to have a collection site person of the same gender available. These revisions are consistent with the June 1994 changes to the HHS guidelines.

The NRC proposes reducing the required urine specimen quantity from 60 milliliters (ml) to 30 ml for the primary specimen and, when split specimens are collected, to require the collection of an additional 15 ml (Section 2.4(g)(11)). This change conforms with recent revisions to the HHS guidelines. Because some licensees conduct on-site testing and test for additional drugs, they may need to collect an additional volume to meet these needs. The NRC understands that laboratories require only a few milliliters for testing and that a 30 ml sample is sufficient in volume for both immediate testing and for the retention of a second aliquot for further testing, if necessary. The NRC also understands that accurate measurement of specimen temperature is difficult with a small volume but does not believe that ''partial'' specimens should be disposed of and not tested. Reported experience in other industries indicates that the consumption of water by those unable to give a urine specimen should be limited to one 8-ounce glass of water every 30 minutes but not to exceed a maximum of 24 ounces. This rate would protect the health of individuals who are providing specimens and is consistent with the recent revision to the HHS guidelines.

The NRC proposes changes to the collection procedures to ensure that a urine specimen is not adulterated or diluted and to detect surrogate samples being submitted. Licensees have reported several examples of specimens being adulterated or diluted and surrogate samples being submitted. This experience is consistent with that of other workplace programs discussed at HHS's Drug Testing Advisory Board meetings. These recommended changes reflect the NRC's desire to minimize the vulnerabilities in the collection and testing of urine specimens that substance abusers have exploited. In addition to limiting the time between notification and collection recommended in § 26.24(e), the first proposed change in the collection procedure in Section 2.4(g) would provide clearer guidance that an observation of a urine specimen for color and clarity be used to identify only obvious signs of adulteration (Section 2.4(g)(14)). Urine color and clarity are affected by a wide range of physiological changes including an individual's health, level of hydration, medications, and diet. Test personnel should therefore use observation of color and clarity of the specimen only for gross signs of adulteration. These may include crystals settled in the bottom of the container, off-colors such as blue or green, and an excess of bubbles when the container is shaken. The second proposed change (Sections 2.4(g)(13) and 2.4(g)(15)) would establish a narrower temperature band for acceptable urine specimens, with a minimum temperature of not less than 34°C/94°F (now specified in whole numbers in accordance with HHS guidelines). This should make attempts to submit surrogate samples more difficult and, together with other changes, would be consistent with practices by a few licensees that have produced good results. The third proposed change would allow licensees to set their own parameters, within the range set by the rule, of the accepted urine temperature range. This increased flexibility recognizes that there are a number of acceptable options for recording temperature and that each allows different minimum and maximum acceptable readings. For example, some temperature recording devices are located in the specimen container and record a ''peak'' temperature immediately. The temperature that is expected to be recorded by this device is close to core body temperature—a temperature that could occasionally require a second specimen under direct observation under the current rule. The current temperature requirement is based on a method that records the temperature several minutes after the specimen leaves the body. The range of temperatures (i.e., the spread between the minimum and maximum acceptable temperatures) must be limited as specified in the rule. The type of temperature reading device, and the acceptable range of temperature for that device, must be specified in the licensee's procedures. Two other proposed changes would reduce the likelihood of undetected tampering by requiring secure sealing of specimen bottles and, in accordance with HHS guidelines, shipment in tamper evident containers.

The NRC proposes two changes in this section with regard to testing for alcohol (Section 2.4(g)(18)). First, the NRC proposes to remove the requirement that the worker undergo a second breath test for alcohol when the first test is essentially zero (less than 0.01 BAC). The licensee may, at its discretion, collect and measure the breath a second time. This change reduces the impact on individuals being tested and on the licensee by reducing the amount of time taken by the testing process. It has been determined that a second negative test result is not

technically necessary. Second, the NRC recognizes that alcohol is metabolized relatively quickly (nominally 0.015 percent BAC per hour) and proposes to make explicit that the length of time between a confirmed positive breath test for alcohol and the drawing of a blood specimen to test for purposes of appeal must be minimized. This proposed amendment would require that the interpretation of the results of such a test must consider the time elapsed between the confirmed positive breath test and the drawing of blood for use in an appeal process.

Section 2.4(g)(24) [formerly (25)] would be revised to provide flexibility in internal reporting and actions when an individual fails to cooperate.

The NRC proposes making various revisions to the requirements for specimen preparation and transportation to the HHS-certified laboratory or to the licensee's testing facility to decrease the chance that specimens will be degraded between the time they are collected and the time they are screened and confirmation tested (Section 2.4 (i)). Reports from several licensees have suggested that specimen degradation during shipment has been the cause of ''false negative'' test results. The NRC has been advised that specimens not kept chilled during storage or transit may have become contaminated because of the buildup of bacteria and their wastes to an extent sufficient to possibly alter laboratory test results. Information on this phenomenon is limited and there are conflicting opinions regarding the seriousness of the problem. For example, one MRO stated that 19 of 21 on-site screening test positives were not confirmed because of degradation of the samples during shipment. (See Appendix B to NUREG/CR–5784.) Also, the reasons for unsatisfactory results of blind performance tests reported by the HHS-certified laboratories are that the blind specimens degraded below the cutoff levels or that the specimen containers adsorbed some of the drugs or metabolites. Therefore, the NRC has conducted pilot tests to gain additional insight on whether specimen degradation was a problem. These pilot tests detected a significant level of cocaine metabolite deterioration when urine specimens with a high relative acidity/alkalinity (pH) level were stored at relatively high temperatures (i.e., 100°F) for 36 hours or more. A modest study by one licensee showed a definite decrease in the concentration levels of THC in specimen bottles stored at room temperature for one week (e.g., from 199 to 178 ng/mL); where the specimen was allowed to touch the inside of the cap sealer, the concentration was reduced more than one half (e.g., from 199 to 77.8 ng/mL). The NRC specifically invites comments regarding the proposed revisions concerning specimen degradation and whether rule changes should be made or the information published in report form for voluntary use. In particular, the NRC is interested in data that licensees conducting on-site testing could provide. Of specific interest would be examples of on-site unconfirmed positives that had degraded during shipment. Licensees or other parties submitting such information should include any known factors, such as temperatures and duration of exposure to the suspect condition, that may have contributed to the problem.

At this time, the NRC proposes two specific revisions intended to address this specimen degradation problem. The first revision would continue to require that urine specimens be shipped to the HHS-certified laboratory within six hours of collection or cooled to not more than six degrees centigrade pending shipment (as previously required by 2.7(c)). The second revision would require that the time between specimen shipment and receipt of the specimen at the HHS-certified laboratory not exceed 48 hours, or that the time between shipment and the screening test at the HHS-certified laboratory not exceed 72 hours.

The NRC proposes several other minor editorial revisions to Section 2.4 in response to industry experience. These revisions do not substantially alter the intent of the original rule. Changes to Section 2.4(i) would simplify the tracking system for the courier and the laboratory. The NRC proposes that collection personnel should report incidents when an individual refuses to cooperate in the testing process to an appropriate authority (Section 2.4(j)), as designated by the licensee, rather than through the MRO to appropriate management. The NRC believes the MRO need not be a key player because refusals to cooperate are administrative concerns rather than medical problems.

Section 2.6 Licensee Testing Facility Personnel

A change conforming to the HHS guidelines is proposed to assure that training of licensee testing facility managers includes maintenance of chain-of-custody.

Section 2.7 Laboratory and Testing Facility Analysis Procedures

Proposed revisions to this section further clarify wording and procedures discussed in previous sections.

The NRC proposes several changes in this section that would be consistent with the recent revisions to the HHS guidelines. The NRC proposes to reduce the screening cutoff level for marijuana from 100 nanograms per milliliter (ng/ml) to 50 ng/ml (Section 2.7(f) formerly 2.7(e)). Current testing technology is capable of supporting reliable and valid results at this level. In addition, analysis of results in nuclear industry drug testing programs shows that positive test rates (indicating increased detection) increased substantially when the screening level was lowered to 50 ng/ml from 100 ng/ml. These proposed changes would make the NRC's FFD rule consistent with the HHS Guidelines (59 FR 29908; June 9, 1994) and the cutoff levels used by all other Federal agencies. This change is needed to ensure that licensees' specimens are tested by a process certified by HHS (any cutoff level different than the HHS-certified process must be accompanied by appropriate QA measures). The NRC proposes a revision to eliminate the requirement that test results be reported in batches (Section 2.7(h)(1)). In addition to being consistent with the recent revisions to the HHS guidelines and the current general practice, this would significantly decrease the amount of time required for licensees to receive certain types of test results from the laboratory.

The NRC proposes to clarify its original intent that licensees which retain split specimens must use a different HHS-certified laboratory in cases where a split specimen is being tested for an appeal (§ 2.7(k)). The NRC was informed by HHS that requiring a different laboratory essentially guarantees a different process for preparing the specimen which would provide a high assurance of detection of any laboratory error or inaccuracy of test results. In one instance, the same laboratory that produced a positive test retested the specimen during an appeal and, using the same method, made the same mistake and produced a second false positive test. The false positive was discovered in response to repeated appeals by comparing this laboratory's results with the results reported by another laboratory. Although suspected false positives have been extremely rare, this proposed revision would further reduce the possibility for recurrence of a false positive due to a laboratory error.

The NRC is proposing a number of revisions to this section aimed at enhancing the effectiveness and reliability of licensee FFD program by requiring testing to determine the validity of specimens; this adaptation of a recent change to the HHS guidelines would detect evidence of adulteration or dilution, thereby reducing the potential for subversion of the testing process. This change would also address concerns that the rule does not require the laboratories to report the results of tests, such as pH, specific gravity (SG), and creatinine, to the extent these tests are performed. Licensees have encountered various practices, such as adulteration and dilution, by substance abusers to avoid detection and the NRC desires to minimize the vulnerabilities in the testing process that have been exploited. One of these measures would be to determine specimen validity. Licensees conducting onsite testing would be required to determine the validity of all specimens collected; this would avoid disposal of specimens that would have been determined invalid by the laboratory. The validity of the specimens would be determined through the addition of testing for specific gravity on arrival of the specimens at the licensee's onsite testing facility or the HHS-certified laboratory (Section 2.7(e)). The NRC requests comments on whether these tests for determining specimen validity should include tests for acidity/alkalinity (pH), creatinine, and other tests for adulterants and whether these tests should be conducted as part of the collection process so that a second specimen can be collected immediately and under direct observation. To protect those being tested from incorrect conclusions about the validity of a specimen, the NRC is proposing that those specimens determined to be outside of specification would be subjected to both screening and confirmation tests at the limit of detection that the laboratory is capable of performing. The NRC understands that this may not be technically feasible for specimens containing some adulterants. In those cases, the laboratory would not test to limit of detection (LOD) and would report the specimen condition. The NRC understands that some HHS-certified laboratories have an LOD much lower than the established cutoff values, while others may not be able to achieve an LOD less than 40 percent of established cut off levels. Therefore, the NRC requests comments on the desirability of requiring that tests of specimens which are outside of specifications (i.e., show evidence of adulteration or dilution) be performed at the HHS-certified laboratory's LOD and depending on licensees to select laboratories capable of achieving the lower LODs and to develop appropriate quality controls. Recognizing the ability of HHS-certified laboratories to identify drug metabolites at lower concentration levels found in dilute specimens in a forensically sound manner, the NRC believes this is an appropriate approach to reducing the potential for incorrect conclusions about the validity of a specimen.

The NRC believes that the information developed during these procedures would enable the MRO to make an accurate determination of whether a specimen of questionable validity has actually been adulterated or diluted. If the specimen has been heavily adulterated or diluted, specimen validity test results would indicate an obvious attempt to subvert the testing process. If the specimen is moderately diluted, with no drugs detected, and the worker's health habits reveal consumption of appropriate quantities of liquids, the MRO would determine no attempt to subvert the testing process. If drugs are detected, the MRO would conclude that the worker has attempted to subvert the testing process.

In keeping with this proposed change to reduce subversion of the testing process, the NRC proposes to require (in Section 2.7(d)) that the Medical Review Officer report any adulteration or dilution evidence (excluding hydration resulting from an acceptable reason) to licensee management in order to enable licensee management to more vigorously pursue subversion attempts (Section 2.7(h)(1), formerly Section 2.7(g)(1)). Hydration resulting from acceptable reasons (e.g., drinking fluids for health reasons) would be excluded because this type of hydration occurs frequently, especially in warm climates. Another revision would add urine specimens that are determined on site to be questionable for adulteration or dilution to those specimens that licensees must ship to an HHS-certified laboratory for testing (Section 2.7(d)). By a related revision, all specimens that have been adulterated or diluted, or that the licensee specifies have been associated with personnel actions for other reasons, would be subject to long-term frozen storage for at least one year by HHS-certified laboratories (Section 2.7(i)). The NRC recognizes that these changes are minor clarifications or modifications to existing requirements and understands that many licensees are currently performing these proposed actions.

The NRC proposes four changes to the requirements for testing. First, the NRC proposes that a test for d (dextro) and l (levo) isomers of methamphetamine be required for all positive tests for amphetamines (an additional two days are provided the laboratory for processing specimens suspected of containing amphetamines) (Section 2.7(g)(6)). Some legal drugs (e.g., Vicks inhaler) contain amphetamine compounds that may yield a laboratory-confirmed positive for amphetamine use. Laboratory confirmatory tests for the d and l isomers are able to differentiate between compounds and to identify those positive test results that are the result of legal use. Many licensees have already been using this test as further confirmation of positive test results for amphetamines. This proposed revision would mandate the use of this test by all licensees and be consistent with current laboratory practice described by HHS in its Technical Advisory of March 11, 1991. Second, a new Section 2.7(f)(3) would permit multiple screening tests only in certain limited situations. This would adopt with some modification a 1994 change HHS made to its guidelines which is intended to be limited to amphetamines to reduce the effect of possible cross reactivity due to structural analogs, and to unique testing problems. However, a few licensees have expressed concern when they learned their laboratory was routinely using multiple screening tests on all specimens. Multiple screening tests should not be used on a routine basis because of the increased number of false negative test results that could occur. Third, the NRC is also proposing to reduce the time that licensees must wait for laboratories to provide testing results and, thereby, enable licensees to grant unescorted access to new employees and to conclude activities related to drug testing in a more timely manner (Section 2.7(h)(1)). It is the NRC staff's understanding that most HHS certified laboratories can, and usually do, report negative results to the licensee within 24 hours of receipt of specimens. A laboratory-confirmed positive result usually requires another 24 to 48 hours. Exceptions are when a positive test result for amphetamine requires further testing for d and l isomers or an opiate positive requires further testing for 6-acetylmorphine (6-AM) at a few laboratories. The reduced period of time provided to laboratories to report results assures that licensees will receive results in a timely manner and will reduce the time that new employees will have to wait for their unescorted

access, thereby reducing costs to the licensee. Fourth, the NRC proposes to require that a methamphetamine confirmatory test result contain at least 200 ng/ml of amphetamine for the result to be reported as a laboratory positive (Section 2.7(g)). This revision would conform with a similar change made to the HHS Guidelines on June 9, 1994 (59 FR 29908). This requirement was adopted by HHS to prevent false positive methamphetamine results that can be caused by chromatographic resolution problems in the confirmatory testing process.

In a related matter, the NRC understands that a significant percentage of laboratory-confirmed positives for opiates are determined to be negative by the MROs based on use of prescription medication, poppy seed consumption, no clinical evidence, or other reasons. In several public meetings, MROs and other FFD program personnel have expressed concern that the current opiate testing levels are not properly targeting opiate abusers. The concern is that the program is not effective in deterring or detecting heroin use (the rule requires clinical signs of abuse for the MRO to determine the test result as positive, yet heroin is frequently smoked or inhaled leaving no clinical signs of abuse), and large numbers of laboratory confirmed positives for opiates are determined negative, which imposes an unnecessary burden on the MROs and costs to the licensees. Data from eight licensees summarized in Table 3.12 of NUREG/CR 5784 indicate that only 2 of 124 laboratory-confirmed opiate positives were confirmed by MROs as positive (both of these positive results were reported by one licensee). These data are consistent with anecdotal reports from HHS and DOT officials and MROs.

The NRC understands that the Department of Defense (DOD) has raised its screening test cutoff level for opiates to 2,000 ng/ml and the confirmatory test cutoff levels for morphine to 4,000 ng/ml, codeine to 2,000 ng/ml, and 6-AM (a metabolite specific for heroin) to 10 ng/ml.

The NRC is specifically interested in public comments and supporting data as to whether it should raise the cutoff levels for screening and confirmation tests for opiates. Should the NRC set its levels consistent with those set by the DOD and proposed by HHS on November 16, 1995 (60 FR 57587)? Given the level of concern for safety in the nuclear industry, should the NRC retain the current levels?

Two revisions related to the short-term refrigerated storage of specimens are also being proposed (Section 2.7(c)). This section currently requires that specimens that do not receive a screening test within seven days of arrival at the HHS-certified laboratory be chilled in secure refrigeration units. The NRC has determined through pilot experiments that at least one drug metabolite is subject to deterioration if a urine specimen containing this metabolite is allowed to stand for more than 32 hours at relatively high temperatures. The NRC has also become aware of anecdotal evidence that indicates that, when specimens are shipped or stored at warm temperatures, there is a potential for drug or metabolite deterioration such that specimens containing drugs or metabolites over the cutoff level at the time they were submitted can be found to be negative in either screening or later confirmatory tests. The NRC is, therefore, proposing to require that specimens that will not receive a screening test and, if appropriate, a confirmatory test within one day of arrival at the HHS-certified laboratory be stored in a chilled condition until tested.

The NRC proposes several modifications that would clarify or modify requirements in light of industry experience. These modifications do not significantly affect the rule's original intent and are intended to reduce unnecessary problems in the implementation of the rule. First, Sections 2.7 (f)(1) and (g)(2), formerly Sections 2.7(e)(1) and (f)(2), would be modified to clarify that licensees using lower cutoff levels are not required to perform two different tests at different cutoff levels. Instead, they are expected to use extrapolation techniques to provide the required estimates of the number of positive test results from HHS-certified laboratories that would have occurred using the NRC cutoff level. Second, the NRC proposes to delete the requirement that licensees have emergency power equipment available for refrigeration units in the event of a power outage (Section 2.7(c)). Instead, the proposed revision would require only that licensees have some kind of contingency measures available to maintain specimens in a chilled state. Third, the NRC proposes to allow routine administrative tasks now assigned to the MRO to be performed by the administrative staff of the MRO (Section 2.7(h)(2)), formerly Section 2.7(g)(2). Licensee experience has found that the duties of the MRO are extensive and that many of the duties prescribed in the rule could be performed equally well by the MRO's staff without compromising the privacy of individuals. Fourth, the NRC proposes to make explicit that licensee contracts with HHS-certified laboratories provide that the licensee and the NRC should be able to obtain from the laboratory all information and documentation that is reasonably necessary for the licensee's inspection or audit of the laboratory, including, but not limited to, copies of the laboratory's HHS certification results (Section 2.7(n), formerly Section 2.7(m)). In addition, this revision provides for reduced licensee inspection activities in those areas currently inspected under the HHS certification program. Fifth, the NRC proposes to add to Section 2.7(n) a provision that would permit, in the event that a licensee's HHS-certified laboratory loses its certification, the licensee to use for up to 3 months an HHS-certified laboratory that has been audited by another NRC licensee that shares the same drug testing and cutoff standards. In such cases, the licensee would be required to audit the newly contracted laboratory within three months. Sixth, the NRC proposes to revise Section 2.7(h)(5) (formerly Section 2.7(g)(5)) to clarify that the laboratories, which are now required to provide expert testimony covering drug test results, would retain the originals of the specimen chain-of-custody form in order to assure that evidence is available for appeals. The documents would be retained by the laboratory consistent with the proposed retention requirements in Section 2.2(a) of the Appendix. Seventh, the NRC proposes to clarify the original intent of Section 2.7(k) (formerly Section 2.7(j)) with regard to the applicability of the quantification of test results to split specimens. In a related matter, the NRC considered but decided not to adopt a change to Section 2.7(h)(3) to further clarify that the laboratory must provide quantitation of test results to the MRO when requested. Some laboratories have been reluctant to provide such requested information. Eighth, the NRC proposes to clarify that the individual must be informed of his/her option to test the split sample (Section 2.7(k)). Inspections have indicated that, for various reasons, not all individuals are so informed. Ninth, the NRC proposes to make explicit that all standards used to calibrate alcohol breath analysis equipment and equipment used at licensees' testing facilities for conducting screening tests must be current and valid for their purpose (Section 2.7(p)(2), formerly Section 2.7(o)(2)). The NRC has received comments from licensees regarding the receipt of out-of-date calibration standards for alcohol breath analysis

and regarding the inability of some screening test equipment to test at required levels. The NRC is also aware of the deliberate use of expired calibration standards.

The NRC also proposes to revise Section 2.7(k) by requiring an individual's request that his or her split specimen be tested in a timely manner. Current wording of the rule does not establish a time limit for an individual to request a test of a split specimen. The proposed revision would permit licensees to establish a definition of ''timely,'' but it could not be restricted to less than 72 hours from the time the individual is notified of the violation. Although recently revised HHS guidelines established a maximum time limit of 72 hours, the NRC believes licensees should be provided the flexibility to determine appropriate time limits for split specimen testing requests that meet particular demands associated with the licensee's notification experience (e.g., notification of result occurring just before a long holiday period or the individual out sick). This revision would also ensure that individuals' rights are protected by establishing the minimum 72 hour period within which they may make a request for split specimen analysis.

A proposed revision to Section 2.7(p)(3) (formerly Section 2.7(o)(3)) would allow use of alcohol breath analysis equipment that conforms to the September 17, 1993, amendments to the National Highway Traffic Safety Administration's (NHTSA) Model Specifications for evidential breath testing devices originally published in 1984. While these amendments reflect new lower evaluation thresholds for devices to measure breath alcohol, licensees need not acquire new devices that meet these amended standards. Breath analysis equipment that meets the 1984 NHTSA standards will continue to be acceptable in NRC FFD programs.

The NRC considered a potential revision to test for agents used to mask the presence of THC and other drugs. An analysis of specimens producing negative screening tests to assure that they do not contain agents that mask the presence of THC and other drugs could be specified by rule. Products that can be added to urine as masking agents are currently available and tests for these products are currently used by some laboratories. Testing for these products would increase the detection of attempts at subverting the testing process. While it has decided not to propose this revision at this time, the NRC invites public comment on both the need for and the resource impact of such a requirement.

The NRC has received requests from several licensees and vendors to permit the on-site use of non-instrumented qualitative immunoassay methods that involve the use of inexpensive, disposable devices. Convenience and speed in obtaining results appear to be the main advantages of these devices. Such testing does not use laboratory analysis techniques, can be performed quickly, and can produce virtually immediate results. These compact and portable testing devices show promise as a quick and easy method for testing in certain circumstances such as physician's diagnostic needs when the presence of drugs or alcohol can affect what treatment is suitable for emergency-room patients. These testing devices may also be well adapted to some criminal justice applications, roadside testing, or testing in remote locations. They are generally able to identify the five drugs or drug metabolites of concern to the NRC.

While Part 26 does not currently preclude the use of such non-instrumented devices for screening tests, the NRC is aware that there are several technical variables involved in the use of these devices that may prevent them from achieving the high levels of specificity, accuracy, and repeatability demanded in licensees' FFD drug testing programs. Temperature and barometric pressure can alter the amount of urine being tested and the repeatability of the test. Temperature variations may affect the reactivity of the chemical reagents and indicator strips being used. These effects alter the amount of urine being tested and the repeatability of the test. The NRC's concern is whether these types of technical variations will have sufficient impact to alter the specificity, accuracy, and repeatability of the test results. The NRC is concerned that the use of such devices may lead to a number of false negative screening test results. (The concern for false positive screening test results is minimal since all positively screened specimens must be tested at an HHS-certified laboratory and any positive results from the laboratory followed by a review of the results by an MRO.) The Commission believes that the use of testing devices that might increase the number of false negative screening test results is not consistent with the goals of FFD testing or to the credibility of the program to those subject to testing.

The NRC is also concerned that there are not sufficient procedural safeguards currently in place that would ensure reliably accurate screening test results if these non-instrumented devices were to be used by licensees. There are, for example, no quality control procedures known to the Commission that could be used to validate the results produced by the use of these devices, nor is there any mechanism in place to validate industry-wide results over time. For example, accurate tests at the beginning and end of a batch of specimens tested with an instrumented test would indicate all specimens in the batch were accurately tested. On the other hand, ''batch'' testing with these non-instrumented devices is probably not feasible. Likewise, the potential for subversion that could be introduced by the use of these devices has not yet been adequately investigated or addressed. Requirements may need to be developed to protect an employee's right to privacy and to minimize the chances for subversion of the testing process. No procedural safeguards exist in the text of the rule or in Appendix A that would address opportunities for subversion of the testing process which may be created by the use of these new devices.

Given the uncertainties surrounding the potential use of non-instrumented testing devices, the NRC would prefer that these devices not be used for screening tests in licensees' FFD programs at this time. The NRC is aware that HHS has been mandated to investigate the accuracy and reliability of these devices. The NRC will monitor the HHS investigation and continue to pursue its own inquiry into the feasibility of the use of these devices for FFD screening tests. As part of this effort, the NRC will determine whether new guidelines, quality assurance procedures, and performance standards that would govern their use should be added to Part 26.

To aid in this effort, the NRC invites public comment on the advisability of its creating guidelines, procedures, or standards for non-instrumented testing devices. The NRC would welcome specific recommendations as to how Part 26 could be amended or other means that would address the concerns discussed above and other issues surrounding the use of such devices. Alternatively, the NRC invites public comment on the advisability of its waiting until procedures or standards governing the use of non-instrumented testing devices are developed by other agencies and then evaluating and adapting those standards to the nuclear power industry's requirements. Should there be a Conforming Products List for these devices similar to that published by the NHTSA for evidential breath measurement devices, and who should administer such a program? The NRC

also would be interested in learning under what conditions, if any, would the use of non-instrumented drug testing devices produce cost savings as compared to licensees' current means of screening.

The NRC notes that Section 2.7(h)(4) (formerly Section 2.7(g)(4)) requires that HHS-certified laboratories transmit drug test results to MROs in a manner designed to protect the confidentiality of that information. In order to promote the efficient administration of FFD programs, it is the Commission's policy that FFD program personnel can assist MROs in the receipt and processing of the laboratory reports. While some programs have chosen to require that test results be received only by their MROs, others have allowed other program personnel under the supervision of an MRO to receive the results and forward them to the MRO. The NRC believes that both approaches are acceptable as long as the procedures for receiving and handling test results within the program are designed to preserve the confidentiality of the test results and actually accomplish that purpose. The NRC reiterates that a test result reported as a confirmed positive by an HHS-certified laboratory must not be considered a violation of a licensee's FFD policy until such result is reviewed by the MRO to determine if it constitutes evidence of such a violation. Therefore, the procedures through which the MROs receive test results from HHS-certified laboratories should contain explicit safeguards against improper disclosure of the report and premature actions such as the laboratory-confirmed test result being recorded in the employee's personnel file, an employment action being taken, or licensee management being notified of the positive result until after the MRO has determined that there is not an acceptable medical explanation for the positive result.

Section 2.8 Quality Assurance and Quality Control

A proposed revision to Section 2.8(b) would clarify that the current requirement that licensee testing facilities ''process'' blind performance specimens means that licensees conducting on-site testing must perform an immunoassay test on all such performance specimens before they are submitted to the HHS-certified laboratory. This revision is intended to make clearer the NRC's original intent regarding this requirement. A further revision would make explicit the requirement that licensees must evaluate the results of their HHS-certified laboratory's testing of the blind performance test specimens and a sampling of specimens screened as negative submitted by the licensee and take corrective action as appropriate.

The NRC, after consulting with SAMHSA, proposes an adaptation of recent changes to the HHS guidelines for blind performance test specimens (Section 2.8(e)). As HHS did with its guidelines, the modifications would reduce the percentage of blind performance specimens, reduce the proportion of blind performance tests relative to the total number of tests submitted, and reduce the maximum required number of blind performance test specimens. These changes are intended to ensure that the number of blind performance test specimens required to be submitted are adequate to assure quality in the testing process and particularly in the HHS-certified laboratory.

The NRC proposes to reduce the percentage of blind performance tests from 50 percent to 20 percent for the initial 90-day period and from 10 percent to 3 percent after the initial period, consistent with changes made to the HHS guidelines and the Department of Transportation's rules. The maximum number of blind performance test specimens required to be submitted both in the initial 90-day period and after is also lowered in the proposed revision. However, the NRC believes a maximum number less than that established by the HHS guidelines would assure adequate quality in the testing process. Whereas HHS lowered the maximum number of blind specimens to be submitted during the initial 90 day period from 500 samples to 200, the NRC proposes a further reduction to 100 specimens. The maximum number of specimens submitted thereafter during each quarter was reduced from 250 to 100 by HHS; NRC proposes a further reduction to 25 blind specimens per quarter.

Because the NRC permits on-site testing and very few specimens with unconfirmed positive test results would be submitted to laboratories at these sites, the NRC, in consultation with SAMHSA, proposes that there should be a minimum number of blind specimens (10 per quarter is recommended) to ensure that a sufficient number are submitted to assure the quality of the testing process.

The NRC intends that utilities with multiple collection sites submitting specimens to the same HHS-certified laboratory meet the percentage requirement for each collection site. However, a licensee may combine the number of specimens collected from its multiple sites to meet the total minimum requirement for all collection sites. That is, if one or more of the utility's collection sites and the corporate office contract with the same laboratory, they may pool their number of regular test specimens to meet requirements for the minimum number of blind performance test specimens. The NRC expects that blind specimens will be submitted to the laboratories from each collection site and that submission will be uniformly distributed throughout each quarter to correspond with the submission rate for other specimens.

The NRC also proposes to lower the percentage of blind performance test specimens which would be blank and raise the percentage which would be positive for one or more drugs (Section 2.8(e)(3)). Increasing the percentage of positive specimens would help offset the reduction in the minimum percentage requirements for blind performance test specimens and would assure that an adequate number of positive performance tests for each drug are submitted for quality control. Also, the NRC proposes that 10 percent of the positive blind specimens be appropriately adulterated or diluted and ''spiked'' to 60 percent of the cutoff value to challenge the laboratory's ability to determine specimen validity as proposed in Section 2.7(e) of the Appendix.

The third proposed revision would clarify that licensees must investigate any testing errors or unsatisfactory performance identified throughout the testing process or during the appeals process (new Section 2.8(f), formerly Section 2.8(e) (4), (5), and (6)). The NRC intended, in the original rule, that testing or process errors discovered in any part of the program, including the appeals process, be investigated as an unsatisfactory performance of a test. Thorough investigation and reporting of such test results will continue to assist the NRC, the licensees, HHS, and the HHS-certified laboratories in preventing future occurrences.

The NRC also proposes to clarify Section 2.8(e)(2) by modifying the reference to ''the initial 90-day period of any new drug testing program'' to read ''the initial 90-day period of any contract with an HHS-certified laboratory.'' The clarification would help assure that intensified quality testing is performed during the initial phase of testing by any new laboratory, as originally intended. (See previous discussions in item number 10.5.6 of NUREG–1354 and item number 4.15 of NUREG–1385.)

The NRC proposes revising Section 2.8(e)(1) by clarifying the criteria that

licensees must follow when purchasing blind quality control specimens. Currently requirements only ensure that blind quality control materials be purchased from labs certified by HHS or a HHS-recognized certification program. Due to the fact that not all suppliers of blind quality control materials adhered to uniform standards for preparation and certification, unacceptable blind quality control specimens have been used. These unacceptable blind quality control test results, e.g., false negatives or false positives, lead to increased costs and lowered efficiency because of additional tests and follow-up actions necessary to validate the results of previously tested actual specimens. More importantly, the unacceptable results may tend to cause loss of confidence in the testing process. In order to eliminate these problems, the NRC proposes to explicitly state the criteria, as HHS did in its recent revisions to its guidelines, in order to clarify for licensees the standards for blind quality control materials and make the rule consistent with existing practice.

Section 2.9 Reporting and Review of Results

The NRC proposes a number of revisions to this section to clarify the original intent of the rule.

Section 2.9(d) requires the MRO to determine if there is clinical evidence of opiate abuse before verifying a test result to be positive for that drug (meaning a clinical examination of all persons whose specimen was reported by the laboratory as positive for morphine or codeine). The NRC has become aware that some MROs believe that the opportunity for an individual to discuss a positive test result and related matters in a telephone conversation rather than at a face-to-face interview is sufficient to comply with this section. Providing the opportunity for only telephone conversations in some situations may not be adequate, particularly in cases where opiate use is in question. FFD experience demonstrates that personal, face-to-face, contact between the MRO and the subject individual can play an important part in arriving at fair and defensible judgments as to whether a violation of FFD policy has occurred. This process will be further clarified in the near future by HHS through revisions to its Medical Review Officer Manual.

The NRC proposes to clarify that the standards applied to the determination of whether clinical evidence of opiate abuse exists would include a range of evidence, including substantial evidence of lack of reliability and results inconsistent with ingestion of food or medication. Some MROs have interpreted this section of the regulation as restricting the types of evidence they should consider (Section 2.9(d)), in some cases resulting in ''pro forma'' rejection of all laboratory positives for opiates.

With regard to legal drugs, the NRC proposes to remove the requirement that Medical Review Officers determine whether there is clinical evidence of unauthorized use of over-the-counter and prescription drugs (Section 2.9(d)). This requirement has created difficulties for Medical Review Officers because there is little guidance that can be developed regarding what constitutes clinical signs of abuse for these substances.

The NRC notes that during the first five years of program operations, there has been programmatic inconsistency in MROs' decisions concerning the abuse of legal drugs, such as the use of drugs prescribed for one's spouse. This inconsistency has resulted in significant variance in management actions taken in response to this type of drug use. The NRC is not proposing a revision to this section. Instead, the NRC expects MROs to use prudent judgment in dealing with those situations which raise significant FFD concerns.

The NRC proposes clarifying that a medical determination of fitness be conducted (Section 2.9(g)) in the following cases: (1) Where there is a reason to believe that on-duty impairment may exist (whether or not there is an FFD policy violation), (2) in the evaluation of all for-cause tests results, (3) before making return-to-duty recommendations, (4) before granting unescorted access to the protected area when a record of a prior FFD violation exists, and (5) if a history of substance abuse is otherwise identified. The licensed physician or Medical Review Officer is to report to licensee management both determinations of FFD violations and determinations of any condition under which an individual may not be able to safely and competently perform his or her duties. These requirements are intended to increase assurance that a medical evaluation is performed for circumstances where fitness may be questionable. The NRC wishes to emphasize that the determination of an impairment problem that does not constitute an FFD violation must not result in punitive action toward the individual.

The NRC proposes to require Medical Review Officers to review BAC readings between 0.02 percent and 0.04 percent and to extrapolate the results of breath analysis for alcohol, or GC analysis of blood, back in time when appropriate (Section 2.9(h)). This would ensure that individuals who can reasonably be concluded to have had a BAC at or above 0.04 percent while on duty will be found to be in violation of the FFD policy.

The NRC proposes to revise Section 2.9(e) by clarifying what constitutes a ''timely'' request by an individual that an aliquot be reanalyzed. This would be an adaptation of the timeliness standard for testing split specimens recently adopted in the HHS Guidelines. However, under the HHS approach the split specimen ''belongs'' to the donor and the primary specimen ''belongs'' to the employer; therefore, the HHS guidelines are silent on timeliness for reanalysis of the primary specimen. Current wording of this paragraph in the NRC's rule requires an MRO to authorize a reanalysis of the original aliquot on the timely request of the individual tested. This ambiguity could be problematic for licensees who must determine how ''timely'' such a request actually is. The proposed revision would permit licensees to establish a definition of ''timely'', but it could not be restricted to less than 72 hours from the time the individual is notified of the violation. The NRC believes licensees should be provided the flexibility to determine appropriate time limits for requests for retesting specimens that meet particular demands associated with the notification of the worker (e.g., notification occurring just before a long holiday period or extended illness), yet this revision would also ensure that individuals' rights are protected by affording them a minimum of 72 hours within which they may make a request for reanalysis of the specimen. In addition, the NRC is allowing licensees the flexibility to dispose of test results, based on scientific insufficiency, after three years.

The NRC proposes adding a new Section 2.7(p)(6) and amending Section 2.9(b) by restricting the types of arrangements that can exist between the MRO and the HHS-certified laboratory or the operating contractor of an on-site testing facility. The NRC proposes to require that the MRO not be an employee, an agent of, or have any financial interest in the laboratory or on-site testing facility operator for which the MRO is reviewing drug testing results. Similarly, the laboratory and on-site testing facility operator shall not have any relationship with the MRO that may be construed as a conflict of interest. These restrictions are consistent with recent changes to the

HHS guidelines and the NRC believes that they will assist in eliminating any conflict of interest between the MRO and the contract laboratory and on-site testing facility operator that may affect the impartiality and objectivity of the MRO in reporting testing deficiencies or errors to licensee.

Section 3.2 Individual Access to Test and Laboratory Certification Results

The NRC proposes to delete this section and incorporate relevant portions of it as Section 26.29(c).

Section 4.1 Use of HHS-Certified Laboratories

The NRC proposes to add a caution, upon the advice of SAMHSA, that the HHS certification process applies only to the drugs and cutoff levels specified by HHS and that the defensibility of the results of tests at more stringent cutoff levels than those required under HHS guidelines, for analyses of blood specimens for alcohol, and tests for substances other than the 5 covered under HHS guidelines depends on appropriate measures by licensees to assure that the reported results are valid.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection and paperwork requirements.

The proposed rule will relax existing information collection requirements and will contain new information collections. The overall effect will also reduce existing information collection requirements, and the overall public burden of this collection of information is expected to be decreased by 170 hours per year per site. These estimates for both reduction and addition to burden include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule. Comments to the OMB on the collection of information or on the following issues must be submitted by June 10, 1996.

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0146), Office of Management and Budget, Washington, DC 20503.

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed rule. The analysis examines the benefits, cost savings, and costs of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained from Loren L. Bush, Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 415–2944.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants and activities associated with the possession or transportation of Category I material. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC on April 11, 1995 (60 FR 18344—10 CFR 2.810).

Backfit Analysis

This proposed rule would modify a prior Commission position by adding new requirements and reducing other requirements. The modifications are intended to improve the effectiveness of the rule in the light of demonstrated program performance and lessons learned since the implementation of the rule and to enhance overall program integrity. Some of the modifications would be made to make the rule consistent with modifications to the national standards on drug testing promulgated by the Department of Health and Human Services. Other modifications are intended to prevent subversion of the testing process (examples include: limiting the time between notification and testing, using a narrower temperature range to make it more difficult to submit a surrogate sample), further ensure the accuracy and integrity of testing (examples include: determining specimen quality, using a narrower temperature range, and requiring timely shipping and testing of specimens to prevent degradation of specimens), clarify actions for removal and return to service, incorporate advances in technology (example: measures to eliminate ''false positives'' from legitimate use of amphetamines), and protect individual rights.

The proposed changes are, for the most part, minor program adjustments or clarifications and do not alter the Commission's original intent. Furthermore, the modifications would better achieve the level of assurance in the accuracy of results and the integrity of the testing process which was originally intended. The NRC believes that some of the changes are needed to minimize the vulnerabilities that are being exploited by substance abusers.

To facilitate public consideration of these proposed changes, the Commission has placed the proposed rule changes into the three groups appearing below. The first group consists of those changes intended to conform the rule to the HHS Mandatory Guidelines that have been modified since the rule was last revised. Subgroup IA lists those changes intended to make the NRC rule compatible with the HHS Guidelines as revised. Because the Commission continues to desire to permit more stringent programs than set forth in the HHS Guidelines, it was necessary to adjust some of the new HHS requirements to meet the needs of the nuclear power industry. These are listed in subgroup IB.

The second group consists of those rule changes that would reduce licensees' regulatory burden. Subgroup IIA lists those changes in this category for which the Commission was able to calculate specific monetary savings to licensees. Some of the proposed changes in the second group would provide licensees with FFD program administrative flexibility that would provide some indeterminate reduction in burden. These changes are found in subgroup IIB.

Group III contains several proposed revisions that the Commission believes to be worthwhile and necessary to better accomplish the FFD rule's objectives. Subgroup IIIA consists of those proposed revisions that are particularly important to achieving the rule's objectives. These include revisions designed to reduce the incidence of subversion of drug and alcohol testing and to enhance the rule's protection of the rights of workers subject to the rule. The proposed changes appearing in subgroup IIIB would serve to clarify the rule's existing requirements, reduce ambiguities that have often resulted in interpretative debates, and make other administrative changes. Some of the Group III changes, such as establishing a more restrictive temperature range, would result in a departure from the HHS guidelines.

Whether the proposed changes would, considered as a whole or individually, provide a substantial increase in overall protection of the public health and safety is a significant question. NRC staff is of the preliminary view that these changes, although desirable, would not provide a substantial increase. Public comment is specifically requested on this question of substantiality.

If the Commission were unable to conclude at the final rulemaking stage that these changes would provide a substantial increase in overall protection, the further question arises whether the rule should nevertheless go forward. One approach to continuation of the rulemaking would be to view the rule as a whole and to conclude, if warranted, that the rule's cumulative effect is to ease licensee burdens or leave them essentially the same, rather than to increase them. This would be consistent with an interpretation that the backfit rule does not apply to relaxations of requirements. However, the mandatory nature of the proposed rule, and effects on interested persons other than licensees, could present complicating factors. Alternatively, the question is presented whether those subject to the rule would decide not to object to the new requirements in view of a perceived overall benefit and, if so, whether non-objection could be grounds for not applying the backfit rule. The basis here would be that the backfit rule was solely directed at controlling objectionable impositions of additional requirements. Public comment on these considerations is specifically invited.

LIST OF PROPOSED CHANGES TO 10 CFR PART 26

Group I: Adoption of National Standards

A. Changes To Ensure Compatibility With the HHS Guidelines as Revised in June 1994

§ 26.24

(f) MRO to report FFD policy violation in writing.

(g) Ensure all collected specimens are tested and results are reported.

Section 1.2 of Appendix A

- Delete definition of permanent record book

Section 2.4 of Appendix A

(d) Courier signature not needed on chain-of-custody documents.

(g)(4) Eliminate requirement that tester request list of medications prior to specimen collection.

(g)(9)+(24) Eliminate the requirement for a permanent record book.

(g)(10)+(15)+(23)+(24) Allow accompaniment or observation by person of same gender, other than a collection site person.

(g)(11) Clarify fluid intake to assist in providing specimen.

(g)(13) Specify the temperature range for an acceptable urine specimen in whole numbers.

(i) Clarify requirements concerning use of second, tamper-evident shipping container.

Section 2.6 of Appendix A

- Assure training of licensee testing facility managers includes maintenance of chain of custody.

Section 2.7 of Appendix A

(f) Lower the cutoff level for marijuana screening tests from 100 ng/ml to 50 ng/ml.

(g) Modify the criteria for determining that a specimen is positive for amphetamines.

(g) Require testing for d and l isomers of amphetamines.

(h) Eliminate batch reporting of results.

(p) Laboratory shall not have a conflict of interest with licensee's MRO.

Section 2.8 of Appendix A

(e) Require blind quality control materials meet standards for preparation, certification, and stability.

Section 2.9 of Appendix A

(b) MROs shall not have a conflict of interest with certified laboratories.

Section 4.1 of Appendix A

(b) Note that licensees need to take appropriate measures when testing outside HHS certification process.

B. Changes To Conform HHS Guidelines Revisions to the Framework of the Original FFD Rule

§ 26.24

(d)(1)+(g) Require licensees to ensure that all collected specimens are tested and results reported.

Section 2.4 of Appendix A

(g)(11) Reduce required minimum quantity of each urine specimen from 60 ml to at least 30 ml (Where licensee chooses to test on site, split specimens, or to test for additional drugs, more than 30 ml will be necessary).

Section 2.7 of Appendix A

(e) Validity of specimens, i.e., tests for adulteration and dilution at HHS laboratory.

(f) Permit multiple immunoassay (screening) tests for the same drug or drug class.

(k) Clarifications to split specimen collection and dispatch procedures and laboratory selection.

(k) Minimum time for requests by individuals to have split specimen tested at another HHS laboratory.

Section 2.8 of Appendix A

(e) Reduce the maximum number and percentage of blind performance specimens to be submitted per quarter but require a minimum.

Section 2.9 of Appendix A

(e) Minimum time for request by individual for reanalysis of original specimen added.

Group II: Reduction in Burden

A. Changes With Quantitative Monetary Benefits

§ 26.2

(f) Eliminate duplicate testing under multiple programs.

§ 26.20

(f) Credit for unescorted access status granted by another licensee.

§ 26.21

(b) Refresher training intervals extended from 1 to 2 years.

(b) Acceptance of generic portions of training provided by another licensee.

§ 26.22

(c) Acceptance of generic portions of training provided by another licensee.

§ 26.24

(a)(1) Flexibility in pre-access testing

—Tests within past 60 days may be considered pre-access tests if they meet the standards of Part 26

—Access may be granted pending test results for individuals covered by an acceptable FFD program for 2 consecutive weeks in the past 6 months

—No pre-access test for those transferring from another program who have been covered by an FFD program meeting the requirements of Part 26 for 30 of the past 60 days.

(a)(2) Persons off site and unavailable when chosen for random testing may be tested when next on site.

(a)(3) People tested for-cause for alcohol can return to duty while awaiting urinalysis results.

(a)(5) Clarify existing testing requirements for persons unavailable for testing for short periods and insure consistency with the access authorization program.

(e) Limit time between notification and specimen collection.

§ 26.27

(a) Fitness history need not be obtained for those covered by other programs or absent for 30 days or less.

§ 26.71

(d) Reduce frequency of program performance reports.

§ 26.80

(a) Change to performance based audit as the basis for reducing required frequency.

Section 2.2 of Appendix A

(a) Permit prompt destruction of chain-of-custody forms showing negative test results.

Section 2.3 of Appendix A

• Extend reinvestigation interval for FFD program personnel from 3 to 5 years.

Section 2.4 of Appendix A

(g)(18) Eliminate second breath specimen when test shows no alcohol.

Section 2.7 of Appendix A

(e) Test questionable specimens to level of detection.

(h) Permit MRO staff to perform certain support functions.

(n) Eliminate need to audit areas covered by HHS inspections.

B. Changes That Provide Greater Flexibility and Indeterminate Monetary Benefits

§ 26.2

(e) Reduce requirements during decommissioning.

§ 26.22

(c) Refresher training intervals may be extended from 12 to 36 months if written exam is given every 12 months.

§ 26.24

(a)(3) Provide flexibility in timeliness of for-cause test.

(f) MRO to complete review as soon as practicable and inform management if determination of test result is delayed more than 14 days after collection instead of completing review and notifying within 10 days after screening test.

(i) Flexibility for unusual medical conditions.

§ 26.27

(a) Certain aspects of fitness history to be limited to 5 years.

(a) Power reactor licensees usually need not obtain statements responding to activities related to possession or transport of Category I nuclear material.

(c) Allow records of FFD violations to be discarded after 5 years.

§ 26.29

(b) Permit provision of personal information for judicial or administrative proceedings initiated by the subject individual.

(b) Permit provision of personal information to contractors and vendors.

Section 2.2 of Appendix A

(a) Reduce time for retention of chain-of-custody forms showing violations.

Section 2.4 of Appendix A

(g)(13) Allow licensees to set temperature range within rule limits.

(g)(24) MRO or other designated medical person can authorize an observed collection.

(j) Flexibility on licensee internal reporting and actions when individual fails to cooperate.

Section 2.7 of Appendix A

(c) Flexibility in means of keeping specimens chilled.

(f)+(g) When licensee uses more stringent cutoff levels, tests at level set by the rule can be calculated and need not be conducted.

(h) Reduce time for laboratories to report results.

(n) Flexibility provided if lab loses certification.

(p) Flexibility to use old or new NHTSA standards for breath analysis equipment.

Section 2.8 of Appendix A

(f) Allow disposal of records of investigative findings after 3 years.

Section 2.9 of Appendix A

(d) Delete requirement for MRO determination of clinical evidence of legal drugs.

(i) Allow disposal of records of negative test results, based on scientific insufficiency, after 3 years.

Group III: Other Worthwhile Changes

A. Improvements Based on Experiences That the NRC Believes Are Needed and Proposes To Adopt

§ 26.24

(a)(5) Require return-to-duty testing after extended absences or denial of access.

(d)(1) Require onsite testers to determine validity of specimens on site.

(h) Require back calculations for BACs between 0.02 and 0.04.

§ 26.27

(b)(3)+(4) Minimum sanctions for positive test for alcohol or the use of alcohol within the protected area.

§ 26.28

• Assure that appeal rights cover all types of violations, including confirmed positive test results from applicants for unescorted access and determinations of subversion.

• Assure that relevant records are corrected if appeal is successful.

§ 26.29

(c) Assure provision of copies of records to individuals upon written request.

Section 2.4 of Appendix A

(g)(13)+(15) More restrictive temperature range for an acceptable urine specimen.

(i) Laboratory must receive specimens within 48 hours of shipment.

Section 2.7 of Appendix A

(d) Specimens questionable for adulteration or dilution at licensees' testing facilities must be shipped to HHS laboratory for testing.

(e) Require onsite testers to determine validity of specimens on site.

B. Clarifications to Existing Requirements, Changes To Reduce Interpretive Debates, and Administrative Changes Which Are Also Proposed

§ 26.2

(a) FFD program personnel to be covered by FFD rule.

§ 26.3

- To support other rule changes, revise existing definitions, create new definitions, and relocate some definitions from Section 1.2 of Appendix A.

§ 26.7

- New section ensures communications are sent to Document Control Desk.

§ 26.8

(c) Section regarding burden estimates deleted.

§ 26.20

- Minor clarifying and conforming edits (Introduction, (c), (d), (e)(2)).

(a) Offsite involvement with drugs, subversion of the testing process, and refusals to test added to policy statement.

(a) Clear and concise policy statement must be readily available.

(a) Policy must address impairment from legal drug use.

(d)(3)+(4) Policy must specify actions to be taken for subversion and refusal to provide a specimen.

(e)(1) Declaration of fitness to perform tasks assigned when contacted for call-in.

(f) Statement regarding Commission's right to review licensee policy is deleted.

§ 26.21

(a) Minor administrative and clarifying edits.

§ 26.22

(c) Supervisory training for licensee employees must be completed as soon as feasible following assignment to supervisory duty.

(c) Supervisory training for contractor employees must be completed no later than 10 days following assignment to supervisory duty.

§ 26.23

(a) Clarify that persons with a known (to the contractor or vendor) history of substance abuse must not receive assignments to the protected area without the knowledge and consent of the licensee.

§ 26.24

(a)(1) Specify that all testing prior to granting unescorted access is to be called pre-access testing.

(a)(1) Clarify that negative pre-access test result must be obtained prior to access.

(a)(2) Random testing must be conducted on weekends, backshifts, and holidays.

(a)(2) Individuals selected for random testing during an absence of 60 days or more to be tested only once to meet both random and return-to-duty testing requirements (see § 26.24 (a) (5)); tests to be reported as random.

(a)(3) Clarify conditions that initiate for-cause test.

(a)(3) Ensure removal of unfit persons and determination of fitness prior to return to duty.

(a)(4) Relocate follow-up testing requirements from § 26.27(b)(4/5) and clarify testing is to be unpredictable and tailored to medical history.

(a)(4)+(c)+(d)+(f)+(g)+(h) Minor clarifying edits.

(h) Clarify that blood testing for alcohol is for purposes of appeal.

(h) Clarify that any detectable quantity of alcohol in a blood specimen may be considered to determine FFD violation.

§ 26.25

- Clarify that EAPs must be designed to achieve early intervention and must assure confidentiality.

§ 26.27

(a)+(b) Clarifying and conforming edits.

(b)(1)+(3)+(5) Clarification of requirements with respect to access denial, removal, and return to service.

(b)(2) Conforming change regarding the threshold for alcohol policy violation.

(b)(3) People suspended must still be covered by behavioral observation, chemical testing, and sanctions for violations.

(c) Clarify that acts of subversion must be violations of policy and result in denial of unescorted access for 3 years and that the specific cause for removal must be provided in response to an inquiry.

(d) Clarify licensee handling of NRC contractors believed to be unfit.

§ 26.28

- Clarify that the appeals process must be objective and conducted by persons not associated with the FFD program.
- Clarify that an individual may submit additional relevant information

§ 26.29

(b)+(c) Clarifying and conforming edits.

§ 26.70

(a) Clarifies the records that NRC may inspect.

§ 26.71

(b)+(c) Conforming edit.

(d) Include number of subversion attempts by type in program performance reports.

§ 26.73

(a) Conforming changes.

(a) Provides additional examples of significant FFD events.

§ 26.80

(c) Conforming edit.

Section 1.1 of Appendix A

- Minor clarifying edits.

Section 1.2 of Appendix A

- Delete terms defined elsewhere in Part 26 or relocated to § 26.3.
- Add definition of limit of detection (LOD).

Section 2.1 of Appendix A

(a) Conforming editorial changes.

(b) Conforming editorial changes.

(e) Minor edit.

Section 2.2 of Appendix A

(a)+(d) Minor and conforming edits.

Section 2.3 of Appendix A

- Minor clarifying edits.
- Fitness-for-duty program personnel tested by independent personnel to the extent practicable.

Section 2.4 of Appendix A

(f) Minor clarifying changes.

(f) Current or previous specimen that fails to meet normal standards constitutes a reason to require observed testing.

(g) Minor clarifying changes.

(g)(14)+ (15)+ (18)+ (19)+ (20)+ (23)+ (24)+ (27) Conforming and clarifying changes.

(g)(23) Require secure sealing of specimen bottle.

(h)+(i) Minor clarification of sealing and labeling requirements.

(i) Continue to require specimens to be shipped to HHS laboratory or cooled within 6 hours of collection as previously required by § 2.7 (c).

(i)+(j) Conforming changes.

Section 2.5 of Appendix A

- Minor clarifying edits.

Section 2.7 of Appendix A

(b)+(d)+(f)+(g)+(h)+(i)+(k)+(l)+(m) Minor clarifying edits.

(c) Require chilling or testing within one day of arrival at HHS laboratory.
(d) MRO to report adulteration or dilution to management immediately.
(f)+(g) Standards for BAC established.
(h) Evidence of subversion must be reported by HHS laboratory.
(h) Laboratory retention of original chain-of-custody form.
(i) Specimens associated with subversion to be placed in long-term storage.
(j) Retesting of adulterated or diluted specimens need only confirm specimen not valid.
(m) HHS laboratories must have blood analysis capabilities.
(n) Specify that licensee contracts with HHS laboratories will assure that copies of records are available to licensees and NRC inspectors.
(p) Calibration standards (for calibrating equipment used to test for alcohol and screen for drugs) must be current and valid.
(p) Two-year retention period for laboratory procedure manuals after end of contract with licensee.
(p) Licensee to retain latest testing procedure manual until it is no longer performing onsite testing.

Section 2.8 of Appendix A

(a)+(b)+(c)+(e)+(f) Minor clarifying and conforming edits.
(b) Laboratory results on blind performance specimens must be evaluated and appropriate corrective actions taken.
(e) Change the proportion of blank and positive blind performance test specimens.
(e) Assure regularity of submission of blind test specimens.
(e) Adulterate or dilute and spike some blind performance specimens.
(e) Specify that initial 90-day period for blind performance testing rate applies to all new contracts with HHS laboratories.
(f) Investigation of testing process errors and inclusion of report of action taken.
(f) All false positive errors must be reported to NRC.

Section 2.9 of Appendix A

(a) Minor conforming edits.
(b)+(c)+(d)+(e)+(f) Clarifying and conforming changes to MRO duties for reporting and review of results.
(d) Clarification of clinical evidence of abuse.
(f)+(g) Medical determination of fitness to perform duties defined.
(h) Conforming language for extrapolation of BAC results between 0.02 and 0.04
(i) Minor clarifying edits.

Section 3.2 of Appendix A

- Section deleted and incorporated into § 26.29(c).

Section 4.1 of Appendix A

(a) SAMHSA replaces NIDA and change of room number.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements, Sanctions.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 26.

PART 26—[AMENDED]

1. The authority citation for part 26 is revised to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended, (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 26.2, paragraphs (a) and (d) are revised, and new paragraphs (e), and (f) are added to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to:
(1) All persons granted unescorted access to nuclear power plant protected areas;
(2) Licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures;
(3) SSNM licensee and transporter personnel who:
(i) Are granted unescorted access to Category IA Material;
(ii) Create or have access to procedures or records for safeguarding SSNM; and
(iii) Make measurements of Category IA Material;
(iv) Transport or escort Category IA Material; or
(v) Guard Category IA Material; and
(4) FFD program personnel who:
(i) Can link test results with the person who was tested;
(ii) Make removal and return-to-work recommendations or decisions;
(iii) Are involved in the selection and notification of employees for testing and in the collection and on-site testing of specimens.

* * * * *

(d) The regulations in this part apply to the Corporation required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in § 26.2(a)(3).
(e) For facilities in the process of being decommissioned, the scope of a fitness-for-duty program may be reduced to persons and specified areas as deemed appropriate by the NRC to protect public health and safety.
(f) Persons performing activities under this part who are covered by a program regulated by another Federal agency or State that meets the general performance objectives of this part need only be covered by those aspects of a licensee's fitness-for-duty program not included in the Federal agency or state program.

3. Section 26.3 is amended by removing the definitions for *follow-up testing, random test,* and *suitable inquiry,* revising *aliquot, confirmatory test,* and *confirmatory positive test,* and adding in alphabetical order the following definitions, *abuse of legal drugs, behavioral observation, blood alcohol concentration (BAC), HHS-certified laboratory, laboratory-confirmed positive, licensee's testing facility, medical determination of fitness, screening test, substance abuse, subversion and subvert the testing process, supervisor,* and *unconfirmed positive test result.*

§ 26.3 Definitions.

Abuse of legal drugs means the use of a legal drug (e.g., alcohol, prescription, over-the-counter drugs) in a manner that constitutes a health or safety hazard to the individual or to others, including on-the-job impairment. Legal or employment actions against an individual for use of legal drugs constitute evidence of the existence of a health or safety hazard.

Aliquot means a portion of a specimen used for testing. It is taken as a sample representing the whole specimen.

Behavioral observation means observation by supervisors in the course

of their contacts with other personnel to detect degradations in performance, signs of impairment, or changes in behavior which may indicate the need to evaluate an individual's fitness for duty.

Blood Alcohol Concentration (BAC) means a measure of the mass of alcohol in a volume of blood.

* * * * *

Confirmatory test means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the screening test and which uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (At this time, gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) For determining blood alcohol levels, a ''confirmatory test'' means a second test using another breath alcohol analysis device. Additional information may be obtained by gas chromatography analysis of blood.

Confirmed positive test means a laboratory confirmed positive test result that has been verified as a violation of FFD policy by the Medical Review Officer (MRO) after evaluation. A ''confirmed positive test'' for alcohol is obtained as a result of a confirmation of blood alcohol levels of 0.04 percent or higher with a second breath analysis without MRO evaluation or as the result of an extrapolation back in time (back calculation) performed by the MRO.

* * * * *

HHS-certified laboratory means a urine testing laboratory that maintains certification to perform drug testing under the Department of Health and Human Services (HHS) ''Mandatory Guidelines for Federal Workplace Drug Testing Programs.''

* * * * *

Laboratory confirmed positive means the result of a confirmatory test that has established the presence of drugs, or drug metabolites, at a sufficient level to be an indication of prohibited drug use.

Licensee's testing facility means a drug testing facility operated by the licensee or one of its vendors or contractors to perform on site the initial testing of urine specimens.

Medical determination of fitness means the process whereby a licensed physician, who may be the MRO, qualified to make such determination examines and interviews an individual and reviews any appropriate and relevant medical records, in accordance with standard clinical procedures, in order to determine whether there are indications that the individual may be in violation of the licensee's FFD policy or is otherwise unable to safely and competently perform duties. The qualifications for making the determination are related to the fitness issues presented by the patient.

* * * * *

Screening test means an immunoassay screen for drugs or drug metabolites to eliminate ''negative'' urine specimens from further consideration, or the first breathalyzer test for alcohol. Initial screening may be performed at the licensee's testing facility; a second screen and confirmation testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.

Substance abuse means the use, sale, or possession of illegal drugs or the abuse of legal drugs (e.g., alcohol, prescription drugs, and over-the-counter drugs) or other substances.

Subversion and *Subvert the testing process* mean an act intended to avoid being tested or to bring about an inaccurate drug or alcohol test result for oneself or others. Acts of subversion can occur at any stage of the testing program including selection and notification of individuals for testing, specimen collection, specimen analysis, and testing result reporting processes and can include providing a surrogate urine specimen, diluting a specimen, (in vivo or in vitro) and adding an adulterant to a specimen.

* * * * *

Supervisor means any person who has the immediate oversight responsibilities to direct activities of any other person or persons within the protected area or has ongoing responsibility for the supervision of an individual with unescorted access status while that individual is not in the protected area.

* * * * *

Unconfirmed positive test result means the result of a screening test for drugs and drug metabolites that indicates the presence of some drug or drug metabolite and that has the potential to be confirmed through GC/MS testing by an HHS-certified laboratory as a laboratory confirmed positive test result, or the result of a screening test for alcohol indicating a blood alcohol content of 0.02 percent or greater.

* * * * *

4. Section 26.7 is added to read as follows:

§ 26.7 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part must be addressed to the NRC Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of all communications must be sent to the appropriate regional office and resident inspector. Communications and reports may be delivered in person at the Commission's offices at 2120 L Street, NW., Washington, DC, or at 11555 Rockville Pike, One White Flint North, Rockville, Maryland.

§ 26.8 [Amended].

5. In § 26.8, paragraph (c) is removed.

6. In § 26.20, the introductory text and paragraphs (a), (c), (d), (e), introductory text, (e)(1), (e)(2), and (f) are revised to read as follows:

§ 26.20 Written policy and procedures.

Each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Each licensee shall retain a copy of its latest written policy and procedures as a record until the Commission terminates the licenses for which for which the policy and procedures were developed. If any portion of the policies and procedures are superseded, the superseded material must be retained for at least three years. As a minimum, written policies and procedures must address fitness for duty through the following:

(a) An overall description of licensee policy on fitness for duty. The policy must address use of and offsite involvement with illegal drugs, abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs), subversion of the testing process, and refusals to provide a specimen for testing. A clear and concise written statement of this policy must be prepared and be in sufficient detail to provide affected individuals with informtion on what is expected of them, and what consequences may result from lack of adherence to the policy. This statement must be readily available to all persons subject to the policy.

(1) As a minimum, the written policy must prohibit the consumption of alcohol—

(i) Within an abstinence period of at least 5 hours preceding any scheduled working tour; and

(ii) During the period of any working tour.

(2) Licensee policy should also address other factors that could affect

fitness for duty such as mental stress, fatigue, illness, and the use of prescription and over-the-counter medications that could cause impairment.

* * * * *

(c) Procedures to be utilized in testing for drugs and alcohol, including procedures for protecting individuals providing a specimen and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(d) A description of immediate and follow-on actions which will be taken, and the procedures to be utilized, in those cases where persons who are employed by licensees, vendors, or contractors, and are assigned to duties within the scope of this part, are determined to have—

(1) Been involved in the use, sale, or possession of illegal drugs;

(2) Consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess before reporting to duty as demonstrated with a test that can be used to determine blood alcohol concentration;

(3) Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means; or

(4) Refused to provide a specimen for analysis.

(e) A procedure that will ensure that persons called in to perform an unscheduled working tour are fit to perform the task assigned. As a minimum, this procedure must—

(1) Require a statement to be made by a called-in person when contacted as to whether he or she considers himself or herself fit to perform the task assigned and whether he or she has consumed alcohol within the length of time stated in the pre-duty abstinence policy;

(2) If alcohol has been consumed within this period, require a determination of fitness for duty by breath analysis or other means (collection of urine under § 26.24(a)(3) is not required); and

* * * * *

(f) Licensees seeking to grant unescorted access pursuant to 10 CFR 73.56 to personnel covered by another licensee's FFD program that complies with this part may credit that licensee's program through verification that the individual is currently and will continue to be subject to the random testing and behavioral observation programs of either his or her employer or those of the host licensee.

7. In § 26.21, the introductory text of paragraph (a) and paragraphs (a)(2) and (b) are revised to read as follows:

§ 26.21 Policy communications and awareness training.

(a) Persons assigned to activities within the scope of this part must be provided with appropriate training to ensure they understand—

* * * * *

(2) The personal and public health and safety hazards associated with the use of illegal drugs and the abuse of legal drugs including alcohol;

* * * * *

(b) Initial training in the five topics in paragraph (a) of this section must be completed before assignment to activities within the scope of this part. Refresher training in those five topics must be completed on a nominal 24 month frequency or more frequently where the need is indicated. A record of the training must be retained for a period of at least three years. Licensees may accept training of individuals who have been subject to another Part 26 program and who have had initial or refresher training within the 24 months before assignment provided that training by the accepting licensees in the site-specific topics covered by paragraphs (a)(1), (4), and (5) of this section is completed before the granting of unescorted access to the protected area.

8. In § 26.22, the introductory text of paragraph (a) and paragraphs (a)(4) and (c) are revised to read as follows:

§ 26.22 Training of supervisors and escorts.

(a) Managers and supervisors of activities within the scope of this part must be provided appropriate training to ensure they understand—

* * * * *

(4) Behavioral observation techniques for detecting degradation in performance, impairment, or changes in an individual's behavior; and

* * * * *

(c) Initial training for escorts and licensee employees' supervisors must be completed before assignment of duties within the scope of this part, except that after an initial supervisory assignment, the initial training must be completed as soon as feasible but no later than 3 months following the assignment of supervisory duties. Initial training for supervisors of contractor personnel must be completed before assignment of the supervised contractor personnel to duties within the scope of this part or within 10 days after initial supervisory assignment, whichever is later. Refresher training must be completed on a nominal 12-month frequency, or more frequently where the need is indicated. A written examination on the training material given on a nominal 12-month frequency may be used in lieu of refresher training. The written examination must require a demonstration of adequate knowledge of the areas covered in paragraph (a) of this section. Refresher training must be completed on a nominal 36-month frequency even if examinations are used to fulfill this requirement during the interim period. A record of the training or examination in lieu of training must be retained for a period of at least three years. Licensees may accept training of individuals who have been subject to a part 26 program and who have had initial or refresher training within the 12 months before assignment provided that training by the accepting licensee in the topics covered by paragraphs (a)(1), (2), and (5) of this section is completed before granting unescorted access to the protected area.

9. In § 26.23, the introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 26.23 Contractors and vendors.

(a) All contractor and vendor personnel performing activities within the scope of this part for a licensee must be subject to either the licensee's program relating to fitness for duty, or to a program, formally reviewed and approved by the licensee, which meets the requirements of this part. Written agreements between licensees and contractors or vendors for activities within the scope of this part must be retained for the life of the contract and will clearly show that—

* * * * *

(2) Personnel with a known history of substance abuse or having been denied access or removed from activities within the scope of this part at any nuclear power plant for violations of a fitness-for-duty policy will not be assigned to work within the scope of this part without the knowledge and consent of the licensee.

* * * * *

10. In § 26.24, paragraphs (a), (c), (d)(1), the introductory text of (d)(2), (d)(2)(i) and (d)(2)(iv) are revised, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h) and revised, and new paragraphs (e) and (i) are added to read as follows:

§ 26.24 Chemical testing.

(a) To provide a means to deter and detect substance abuse, the licensee shall implement the following chemical testing programs for persons subject to this part:

(1)(i) Preaccess testing for drugs and alcohol must be conducted within 60 days before the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part unless the individual:

(A) Has been covered by a program meeting the requirements of this part for at least 30 days during the 60 days immediately previous to the granting of unescorted access; and

(B) Has no history of substance abuse.

(ii) Any negative drug and alcohol test meeting the standards of this part and performed within 60 days before granting unescorted access may serve as the preaccess test. A negative test result must be obtained before the granting of unescorted access unless the individual has no history indicating the use of illegal drugs or the abuse of legal drugs (e.g., alcohol, prescription, and over-the-counter drugs) and has either had a negative test result on a test meeting the standards of this part performed within six months before granting unescorted access or has been covered by a program meeting the standards of this part for two consecutive weeks during that period.

(2) Unannounced drug and alcohol tests must be imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an approximately equal probability of being selected and tested. Random testing must include testing during all types of work periods, including weekends, backshifts, and holidays. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. At a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Reasonable efforts must be made to test persons selected for random testing. Persons off site when selected for testing, and not reasonably available for testing in a timely manner, must be tested upon returning to the site. For persons off site for more than sixty days, such tests will fulfill the requirement for return-to-duty testing and should be reported to the NRC as random tests. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.

(3)(i) For-cause drug and alcohol testing must be conducted:

(A) Following any observed behavior or physical condition that creates a reasonable suspicion of possible substance abuse including attempts to subvert the testing process;

(B) After accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the individual's performance contributed to the event; and

(C) after receiving credible information that an individual is abusing drugs or alcohol.

(ii) The individual's unescorted access status must be suspended until pronounced fit for duty based on a medical determination of fitness. If the test is based on suspected use of alcohol and the breath analysis is negative, the individual, if determined fit for duty by a medical determination of fitness, may be returned to duty pending results of urinalysis for drugs. For-cause drug and alcohol testing must be conducted as soon as practicable, but within no more than 2 hours for an alcohol test and 8 hours for specimen collection for a drug test.

(4) Follow-up testing must be conducted on an unannounced and unpredictable basis to verify continued abstention from the use of substances as covered under this part. An individual:

(i) Whose unescorted access is reinstated after a suspension under § 26.27(b)(3); or

(ii) Is granted unescorted access after removal under § 26.27(b) (3) or (4) must be subject to follow-up testing that is tailored to the individual's medical history but not less frequently than once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated.

(5) Return-to-duty testing must be conducted when a person seeks to regain unescorted access to protected areas of the site in question after an absence from the possibility of being tested under that site licensee's program for more than 60 days or when a person seeks to regain unescorted access after having been denied access under the provisions of § 26.27(b). Any negative drug and alcohol test meeting the standards of this part and performed within 60 days before the granting of unescorted access may serve as the return-to-duty test except in the case of those who have been denied access under the provisions of § 26.27(b). A negative test result must be obtained before the granting of unescorted access unless the individual has no history indicating the use of illegal drugs or the abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs) and either has had a negative test result on a test meeting the standards of this part performed within six months before the reinstatement of unescorted access or has been covered by a program meeting the standards of this part for two consecutive weeks during that period.

* * * * *

(c) Licensees shall test specimens collected under each type of test listed in § 26.24(a) for all substances described in paragraph 2.1(a) of the NRC Guidelines (Appendix A to part 26). In addition, licensees may consult with local law enforcement authorities, hospitals, and drug counseling services to determine whether other substances with abuse potential are being used in the geographical locale of the facility and the local workforce. When appropriate, other substances so identified may be added to the panel of substances for testing. Appropriate cut-off limits must be established by the licensee for these substances.

(d)(1) All collected urine and blood specimens must be forwarded to a laboratory certified by the Department of Health and Human Services (HHS), except that licensees may conduct tests of aliquots to determine which specimens are negative and need no further testing, provided the licensee's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. All such testing of specimens must include tests to ensure specimen validity as required by section 2.7(e) of Appendix A to part 26. Quality control procedures for screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially analyzed as negative. Except for the purposes discussed in § 26.24(d)(2), access to the results of the above screening tests must be limited to the licensee's testing staff, the Medical Review Officer (MRO), the Fitness-for-Duty Program Manager, and employee assistance program staff, when appropriate.

(2) An individual may not be removed or temporarily suspended from unescorted access or be subjected to other administrative action based solely on an unconfirmed positive result from any drug test, other than for marijuana (THC) or cocaine, unless other evidence indicates that the individual is impaired or might otherwise pose a safety hazard. With respect to on-site screening tests for marijuana (THC) and cocaine, licensee management may be informed and licensees may temporarily suspend individuals from unescorted access or from normal duties or take lesser

administrative actions against the individual based on an unconfirmed positive test result provided the licensee complies with the following conditions:

(i) For the drug for which action will be taken, at least 85 percent of the unconfirmed positive test results from on-site screening tests during the last 12-month data reporting period submitted to the Commission under § 26.71(d) were subsequently reported as positive by the HHS-certified laboratory as the result of a GC/MS confirmatory test.

* * * * *

(iv) No disclosure of the temporary removal or suspension of, or other administrative action against, an individual whose test is not subsequently confirmed as a violation of FFD policy may be made in response to a suitable inquiry conducted under the provisions of § 26.27(a), a background investigation conducted under the provisions of § 73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of § 26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records specified in paragraph (d)(2)(iii) of this section have not been retained and must be informed in writing that the temporary removal or suspension or other administrative action that was taken will not be disclosed and need not be disclosed by the individual in response to requests for information concerning removals, suspensions, administrative actions or history of substance abuse.

(e) The period of time allowed between the notification of the individual and the actual collection of a specimen must be kept at a minimum consistent with operational constraints. Whenever practicable, the individual should not be allowed the time or opportunity to obtain materials or take any action that would subvert the testing process or the test results.

(f) The Medical Review Officer shall complete the review of test results reported by the HHS-certified laboratory and notify licensee management as soon as practicable. The MRO shall report all determinations of violations of the licensee's FFD policy (e.g., positive test results and attempts to avoid detection) to management in writing and in a manner designed to ensure confidentiality of the information. To assure that action is taken immediately, provisions must be made to ensure that the MRO is able to contact appropriate licensee management at any time. Should the MRO's review not be completed within 14 days of the collection of a specimen, licensee management must be advised of available test results, the status of the review, the reasons for the delay, and appropriate recommendations.

(g) All testing of urine specimens for drugs, except screening tests performed by licensees under paragraph (d) of this section, must be performed in a laboratory certified by the U.S. Department of Health and Human Services (HHS) for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (section 2.7(d) of Appendix A to part 26), all specimens sent to HHS-certified laboratories must be subject to screening analysis by the laboratory and all specimens screened as unconfirmed positives must be subject to confirmatory testing by gas chromatography/mass spectroscopy analysis by the laboratory. Licensees shall submit blind performance test specimens to HHS-certified laboratories in accordance with the NRC Guidelines. Licensees must ensure that all collected specimens are tested and that laboratories report results for all specimens sent for testing, including blind performance test specimens.

(h) Tests for alcohol must be administered by breath analysis using breath alcohol analyses devices meeting evidential standards described in section 2.7(p)(3) of Appendix A to part 26. If the screening test shows a breath alcohol content indicating a BAC of 0.02 percent or greater, a confirmatory test for alcohol must be performed using another breath measurement instrument. A confirmatory test result showing a breath alcohol content indicating a BAC between 0.02 percent and 0.04 percent must be forwarded to the MRO for evaluation as described in section 2.9(h) of Appendix A to part 26. A confirmatory test for alcohol indicating a blood alcohol concentration (BAC) of 0.04 percent or greater must be declared a positive test. Further testing for alcohol must be administered if demanded by the individual for the purposes of obtaining additional information that could be considered during an appeal pursuant to § 26.28. Any such test must be a gas chromatography analysis of blood performed on a blood specimen drawn, with the consent of the individual, promptly after the confirmatory breath analysis. Any detectable quantity of alcohol in the blood specimen may be considered, including extrapolation back in time, to determine if a violation of the FFD policy occurred.

(i) If an individual has a medical condition that makes collection of breath, blood, or urine specimens difficult or hazardous, the MRO, in consultation with the treating or personal physician, may authorize an alternative evaluation process, tailored to the individual case, for determining whether a violation of fitness-for-duty policy has occurred, provided this process includes measures to prevent subversion and can achieve results comparable to those produced by urinalysis for illegal drugs and breath analysis for alcohol.

11. Section 26.25 is revised to read as follows:

§ 26.25 Employee assistance programs (EAP).

Each licensee subject to this part shall maintain an employee assistance program to strengthen fitness-for-duty programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the scope of this part. Employee assistance programs must be designed to achieve early intervention. The EAP must also provide for confidential assistance except that the employee assistance program staff shall inform licensee management when a determination has been made that any individual's condition constitutes a hazard to himself or herself or others (including those who have self-referred).

12. Section 26.27 is revised to read as follows:

§ 26.27 Management actions and sanctions to be imposed.

(a)(1)(i) Before the initial granting of activities within the scope of this part, as described in § 26.2(a), the licensee shall obtain a written statement from the individual as to whether he or she:

(A) Has in the past 5 years used, sold, or possessed any illegal drugs, or had a legal or employment action taken against him or her for alcohol or drug use;

(B) Has in the past 5 years been determined to have violated a fitness-for-duty policy, or as a result of action taken in accordance with an FFD policy been denied initial assignment to activities within the scope of this part as described in § 26.2(a), or has been subject to a plan for treating substance abuse (except for self-referral for treatment); or

(C) Has at any time as a result of action taken in accordance with an FFD

policy been removed from activities within the scope of this part as described in § 26.2(a).

(ii) Power reactor licensees need not obtain statements responding to the activities listed in § 26.2(a)(3) unless the background investigation conducted in accordance with 10 CFR 73.56 indicates the person was previously employed by a licensee authorized to possess or transport Category I nuclear material.

(2) The statement must include the individual's declaration as to the specific type, duration, and resolution of any such matter.

(3) The licensee shall complete a suitable inquiry on a best-efforts basis to verify the accuracy of the individual's written statement under paragraphs (a)(1) and (a)(2) of this section. This suitable inquiry should cover at least the past 5 years but in no case less than the past 3 years.

(4) If a record of the type described in paragraphs (a) (1), (2), and (3) of this section is established which raises a concern about the person's history of alcohol or drug use, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, as specified in § 26.24(a)(4). The restrictions of paragraph (b) of this section must be observed. To meet the suitable inquiry requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's, or vendor's inquiry supported by a release signed by the individual being investigated that authorizes the disclosure of the information. A suitable inquiry need not be conducted for any period of 30 days or less that the individual was not covered by an FFD program meeting the requirements of this part.

(5) Failure by an individual to list reasons for removal or revocation of unescorted access or failure to authorize the release of information is sufficient cause for denial of unescorted access. Temporary unescorted access pursuant to 10 CFR 73.56 may not be affected by this part provided that the applicant for unescorted access passes a chemical test conducted according to the requirements of § 26.24(a)(1).

(b) Each licensee subject to this part shall, at a minimum, take the following actions. The requirements of this paragraph do not prohibit the licensee from taking more stringent action.

(1) Personnel, including applicants, who are impaired, those whose fitness may be questionable, and those determined to have violated the licensee's fitness-for-duty policy shall be immediately denied unescorted access or otherwise removed from activities within the scope of this part. These persons may be assigned to or returned to their duties only after impairing or questionable conditions are resolved and the individual is determined to be fit to safely and competently perform activities within the scope of this part by an appropriate manager and a licensed physician qualified to make the medical determination of fitness.

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs or use of alcohol on site, the following must be presumed to be an indication of off-site drug or alcohol use in violation of the company FFD policy:

(i) A laboratory confirmed positive test result that is verified by the MRO as a policy violation; and

(ii) A confirmatory breath test for alcohol that indicates the individual had a BAC of 0.04 percent or greater during any scheduled working tour.

(3) The first violation of the FFD policy involving a confirmed positive drug or alcohol determination must, at a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment, if applicable, must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Although the individual must be removed from activities covered by this part, the individual must continue to be covered during any suspension period by the licensee's FFD program with respect to behavioral observation if in a work status, chemical testing, and sanctions for violations of the licensee's FFD policy. Before an individual is permitted to be returned to duty or assigned to perform activities within the scope of this part, the individual must be determined to be fit to safely and competently perform such activities by an appropriate manager and a licensed physician qualified to make the medical determination of fitness. A return-to-duty test under § 26.24(a)(5) must be conducted before the individual may be returned to duty and follow-up testing under § 26.24(a)(4) must be conducted to verify continued abstinence from the use of substances. Any subsequent violation of FFD policy, including during an assessment or treatment period, must immediately result in removal from activities described in § 26.2(a) for a minimum of 3 years from the date of removal.

(4) Any individual determined to have been involved in the sale, use, or possession of illegal drugs or the use of alcohol while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must immediately be removed from activities within the scope of this part as described in § 26.2(a) for a minimum of 5 years from the date of removal.

(5) Persons removed for periods of three years or more under the provisions of paragraphs (b)(2), (b)(3), (b)(4), and (c) of this section and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this part by a licensee subject to this part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from the use of illegal drugs or the abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs) for at least three years. Before an individual is permitted to be returned or assigned to perform activities within the scope of this part, the individual must be determined to be fit to safely and competently perform these activities by an appropriate manager and a licensed physician qualified to make the medical determination of fitness. A return-to-duty test under § 26.24(a)(5) must be conducted before the individual may be assigned duties and follow-up testing under § 26.24(a)(4) must be conducted to verify continued abstinence from the use of substances. Any further violation of FFD policy must immediately result in permanent denial from activities described in § 26.2(a).

(6) Paragraphs (b) (2), (3), (4), and (5) of this section do not apply to valid prescriptions or over-the-counter drugs. Licensee sanctions for confirmed abuse of valid prescription and over-the-counter drugs must be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs.

(c) Any act or attempted act to subvert the testing process must be a violation of the licensee's FFD policy and must result in denial of unescorted access for a minimum of 3 years. A refusal to provide a specimen, effort to subvert the testing process, or resignation before removal for violation of company fitness-for-duty policy concerning drugs and alcohol must be recorded and

provided in response to a suitable inquiry. The specific cause for a removal, e.g., that a laboratory confirmed positive test result was obtained and that the individual resigned before an MRO review, must also be provided in response to a suitable inquiry. A record of these actions must be retained for five years following denial of any access authorization for the purpose of meeting the requirements of § 26.27(a).

(d) If a licensee has a reasonable belief that an NRC employee or NRC contractor may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but shall escort the individual. In any instance of this occurrence, the appropriate Regional Administrator must be notified immediately by telephone. During other than normal working hours, the NRC Operations Center must be notified.

13. Section 26.28 is revised to read as follows:

§ 26.28 Appeals.

Each licensee subject to this part, and each contractor or vendor implementing a fitness-for-duty program under the provisions of § 26.23, shall establish a procedure for licensee and contractor or vendor employees and applicants for unescorted access to appeal a determination of a violation of FFD policy. The procedure must provide notice to the individual of the grounds for the determination of a violation of FFD policy, and must provide an opportunity to respond and to submit additional relevant information. The procedure must provide for an objective, impartial review of the facts relating to the determination of a violation of FFD policy. The review must be conducted by persons not associated with the administration of the FFD program, as described in § 26.2(a)(4), and may include internal management. If the appeal is successful, the relevant records must be corrected. A licensee review procedure need not be provided to employees of contractors or vendors when the contractor or vendor is administering its own alcohol and drug testing.

14. In § 26.29, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 26.29 Protection of information.

* * * * *

(b) Licensees, contractors, and vendors may not disclose the personal information collected and maintained to persons other than assigned Medical Review Officers, other licensees, contractors or vendors, or their authorized representatives legitimately seeking the information as required by this part for unescorted access decisions and who have obtained a release from current or prospective employees or contractor personnel, NRC representatives, appropriate law enforcement officials under court order, the subject individual or his or her representative, or to those licensee representatives who have a need to have access to the information in performing assigned duties, including medical determinations of fitness and audits of licensee, contractor, and vendor programs, to the presiding officer in a judicial or administrative proceeding initiated by the subject individual, to persons deciding matters on review or appeal, and to other persons pursuant to court order. This section does not authorize the licensee, contractor, or vendor to withhold evidence of criminal conduct from law enforcement officials.

(c) Upon receipt of a written request by the subject individual, the licensee, contractor, or vendor possessing such records shall promptly provide copies of all records pertaining to the determination of a violation of the licensee's FFD policy, including test results, MRO reviews, and management determinations of results pertaining to the subject individual. Records relating to the results of any relevant laboratory certification review or revocation of certification proceeding shall be obtained from the relevant laboratory and provided to the subject individual upon request.

15. In § 26.70, paragraph (b)(2) is revised to read as follows:

§ 26.70 Inspections.

* * * * *

(b) * * *

(2) Duly authorized representatives of the Commission may inspect, copy, or take away copies of any licensee, contractor, or vendor documents, records, and reports related to implementation of the licensee, contractor, or vendor fitness-for-duty program under the scope of the contracted activities. This includes documents, records, and reports of FFD service contractors (e.g., contracted HHS laboratory, MRO, EAP, and specimen collection services) related to licensee, contractor, or vendor FFD programs.

16. In § 26.71, paragraphs (b), (c) and (d) are revised to read as follows:

§ 26.71 Recordkeeping requirements.

* * * * *

(b) Retain relevant records pertaining to the determination of a violation of the FFD policy and the related personnel actions for a period of at least five years;

(c) Retain records of persons made ineligible for three years or longer for assignment to activities within the scope of this part under the provisions of § 26.27(b) (3), (4), and (5) or (c), until the Commission terminates each license under which the records were created; and

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit these data covering the calendar year January 1st through December 31st to the Commission by March 1st of the following year. The data for each site (corporate and other support staff locations may be separately consolidated) must include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by population, and type of test (i.e., pre-access, random, for-cause, etc.); substances identified; summary of management actions; number of subversion attempts by type; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for three years. Any licensee choosing to temporarily suspend individuals under the provisions of § 26.24(d) shall report test results by process stage (i.e., on-site screening, laboratory screening, confirmatory tests, and MRO determinations) and the number of temporary suspensions or other administrative actions taken against individuals based on on-site unconfirmed screening positives for marijuana (THC) and for cocaine.

17. In § 26.73, paragraph (a) is revised to read as follows:

§ 26.73 Reporting requirements.

(a) Each licensee subject to this part shall inform the Commission of significant fitness-for-duty events including, but not limited to:

(1) Sale, distribution, use, possession, or presence of illegal drugs or use of alcohol within the protected area;

(2) Any acts by any person licensed under 10 CFR part 55 to operate a power reactor, by any supervisory personnel assigned to perform duties within the scope of this part, or by any FFD program personnel as specified in § 26.2(a)(4)—

(i) Involving the sale, use, or possession of a controlled substance;

(ii) Resulting in determinations that such an individual has violated the licensee's FFD policy;

(iii) Involving use of alcohol within the protected area; or

(iv) Resulting in a determination of unfitness for scheduled work due to the consumption of alcohol;

(3) Any act that would cast doubt on the honesty and integrity of the FFD program personnel specified in § 26.2(a)(4); and

(4) Arrest of a worker for sale, distribution, use, or possession of illegal drugs on or off site.

* * * * *

18. In § 26.80, paragraphs (a) and (c) are revised to read as follows:

§ 26.80 Audits.

(a) Each licensee subject to this part shall audit the fitness-for-duty program as needed but no less frequently than every 36 months. Licensees are responsible for determining the appropriate frequency, scope, and depth of auditing activities within the three-year period based on review of program performance indicators such as the frequency, nature, and severity of discovered problems, testing errors, personnel or procedural changes, previous audit findings, and ''lessons learned.'' As soon as reasonably practicable, but not later than 12 months after a significant change in fitness-for-duty personnel, procedures, or equipment, licensees shall audit the particular program element(s) affected by that change to assure continued program effectiveness. Program elements which must continue to be audited nominally every 12 months include FFD program elements implemented by contractors and vendors under the provisions of § 26.23, testing performed at HHS-certified laboratories, and FFD services provided to the licensee by contractors and vendors off site or not under the direct daily supervision or observation of licensee personnel. Licensees may accept audits of contractors and vendors conducted by other licensees and need not re-audit the same contractor or vendor for the same period of time. Each sharing utility shall maintain a copy of the audit report, to include findings, recommendations, and corrective actions. Licensees retain responsibility for the effectiveness of contractor and vendor programs and the implementation of appropriate corrective action.

* * * * *

(c) The result of the audit, along with recommendations, if any, must be documented and reported to senior corporate and site management. The resolution of the audit findings and corrective actions must be documented. The documents must be retained for three years.

Appendix A to Part 26—Guidelines for Drug and Alcohol Testing Programs

19. Section 1.1 of Appendix A to part 26 is revised to read as follows:

1.1 Applicability

(a) These guidelines apply to licensees authorized to operate nuclear power reactors and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

(b) Licensees may set more stringent cut-off levels than specified herein or test for substances other than specified herein and shall inform the Commission of such deviation within 60 days of implementing such change. Licensees may not deviate from the other provisions of these guidelines without the written approval of the Commission.

(c) Only laboratories which are HHS-certified are authorized to perform urine drug testing for NRC licensees, vendors, and licensee contractors.

20. Section 1.2 of Appendix A to part 26 is amended by removing all definitions except *chain-of-custody, collection site,* and *collection site person,* adding the definition of *limit of detection LOD,* and revising the introductory text to read as follows:

1.2 Definitions

In addition to the definitions contained in § 26.3, the following definitions apply:

* * * * *

Limit of Detection (LOD) means the lowest concentration of an analyte that an analytical procedure can reliably detect, which should be significantly lower than the established cut-off levels.

21. In section 2.1 of Appendix A to part 26, paragraphs (a), (b), and (e) are revised to read as follows:

2.1 The Substances

(a) Licensees shall, as a minimum, test for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol for pre-access, for-cause, random, follow-up, and return-to-duty tests.

(b) Licensees may test for any illegal drugs and may consider any detected drugs or metabolites when determining appropriate action during a for-cause test or analysis of any specimen suspected of being adulterated or diluted (in vivo or in vitro), substituted, or tampered with by any other means.

* * * * *

(e) This section does not prohibit procedures reasonably incident to analysis of a specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration, or presence of adulterants).

22. In section 2.2 of Appendix A to part 26, paragraphs (a), the introductory text to paragraph (d), (d)(2) and (d)(4) are revised to read as follows:

2.2 General Administration of Testing

(a) Use of a chain-of-custody form. The original must accompany the specimen to the HHS-certified laboratory. A copy must accompany any split specimen. The form must be a record on which is retained identity data (or codes) on the individual providing the specimen and information on the specimen collection process and transfers of custody of the specimen. Chain-of-custody forms related to determinations of violations of the FFD policy must be retained for a period of at least five years following termination of the individual's unescorted access authorization as required by § 26.71(b), or the completion of all legal proceedings related to a positive test, whichever is later. Chain-of-custody forms recording specimens with negative test results and no FFD violations or anomalies may be destroyed after appropriate summary information has been recorded for program administration purposes.

* * * * *

(d) Written procedures, instructions, and training must be provided as follows:

* * * * *

(2) A non-medical collection site person shall receive training in compliance with this appendix and shall demonstrate proficiency in the application of this appendix before serving as a collection site person. A medical professional, technologist, or technician licensed or otherwise approved to practice in the jurisdiction in which collection occurs may serve as a collection site person if that person is provided the instructions described in section 2.2(d)(3) of this appendix and performs collections in accordance with those instructions.

* * * * *

(4) The option to provide a blood specimen for the purposes of obtaining additional information that could be considered during an appeal pursuant to § 26.28 following a positive confirmatory breath test must be specified in the written instructions provided to individuals tested.

23. Section 2.3 of Appendix A to part 26 is revised to read as follows:

2.3 Preventing Subversion of Testing

Licensees shall carefully select and monitor persons responsible for administering the testing program (e.g., collection site persons, on-site testing facility technicians, medical review officers, and those selecting and notifying personnel to be tested), based upon the highest standards for honesty and integrity, and shall implement measures to ensure that these standards are maintained. At a minimum, these measures must ensure that the integrity of such persons is not compromised or subject to efforts to compromise due to personal relationships with any individuals subject to testing. At a minimum:

(1) Supervisors, co-workers, and relatives of the individual being tested shall not perform any collection, assessment, or evaluation procedures.

(2) Appropriate background checks and psychological evaluations of the FFD program personnel specified in § 26.2(a) must be completed before assignment of tasks directly associated with the licensee's administration of the program, and must be conducted at least once every five years.

(3) Persons, specified in § 26.2(a), responsible for administering the testing program shall be subjected to a behavioral

observation program designed to assure that they continue to meet the highest standards for honesty and integrity.

(4) FFD program personnel, specified in § 26.2(a), responsible for the administration of testing must be subject to drug and alcohol testing as specified in § 26.24(a). Fitness-for-duty program personnel shall be tested by personnel independent of the administration of the FFD program to the extent practicable.

24. In section 2.4 of Appendix A to part 26, paragraphs (d), (f), the introductory text of paragraph (g), (g)(4), (5), (9) through (11), (13) through (15), (18) through (20), (23) through (25), and (27), (h), (i) and (j) are revised to read as follows:

2.4 Specimen Collection Procedures.

* * * * *

(d) ''Chain-of-Custody.'' Licensee chain-of-custody forms must be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine and blood specimens from one authorized individual or place to another must always be accomplished through chain-of-custody procedures. The signature of the person (courier) picking up the specimen being shipped to the HHS-certified laboratory does not have to be included on the chain-of-custody form as long as specimens are sealed in tamper-evident containers and there is a tracking system that identifies the courier company conveying the specimens to the laboratory, includes a shipment billing or control number, and requires the signature of the courier. Every effort must be made to minimize the number of persons handling the specimens.

* * * * *

(f) ''Privacy.'' Procedures for collecting urine specimens must allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. For purposes of this appendix the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute a urine specimen:

(1) The individual has presented, at this or any previous collection, a urine specimen that fails to meet the standards for an acceptable specimen as provided in paragraph (g)(15) of this section, or the specimen is determined to be of questionable validity under the provisions of section 2.7 (e) of this appendix.

(2) The individual has presented a urine specimen that falls outside the normal temperature range, and the individual declines to provide a measurement of oral body temperature by sterile thermometer, as provided in paragraph (g)(15) of this section, or the oral temperature does not equal or exceed that of the specimen.

(3) The last urine specimen provided by the individual (i.e., on a previous occasion) was determined to have a specific gravity of less than 1.003 or a creatinine concentration below .2 g/L.

(4) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen.

(5) The individual has previously been determined to have used a substance inappropriately or without medical authorization and the particular test is being conducted as a part of a rehabilitation program or on return to service after evaluation and/or treatment for a confirmed positive test result.

(g) ''Integrity and Identity of Specimens.'' Licensees shall take precautions to ensure that a urine specimen is not adulterated, diluted, or tampered with during the collection procedure, that a surrogate specimen is not provided, that a blood specimen or breath exhalent tube cannot be substituted or tampered with, and that the information on the specimen container and in the chain-of-custody form can identify the individual from whom the specimen was collected. The following minimum precautions must be taken to ensure that authentic specimens are obtained and correctly identified:

* * * * *

(4) After the individual has been positively identified, the collection site person shall ask the individual to sign a consent-to-testing form. The individual shall not be required to list prescription medications or over-the-counter preparations that he or she can remember using.

(5) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments outside of the room in which the urine specimen is collected. The individual may retain his or her wallet.

* * * * *

(9) The collection site person shall note any unusual behavior or appearance on the chain-of-custody form.

(10) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement for urine specimen collection (e.g., an accident investigation), a public or on-site rest room may be used according to the following procedures. A collection site person of the same gender as the individual shall accompany the individual into the rest room which shall be made secure during the collection procedure. If practicable, a toilet bluing agent must be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain-of-custody procedures. If a collection site person of the same gender is not available, the licensee shall select a same gender person to accompany the individual. This person shall be briefed on relevant collection procedures.

(11) Upon receiving a urine specimen from the individual, the collection site person shall determine that it contains a quantity of urine sufficient to meet specific licensee testing program requirements. The quantity collected must include at least 30 milliliters for the primary specimen, and a sufficient quantity for any on-site testing and testing for any additional drugs. Where collected specimens are split under the provisions of section 2.7(k) of this appendix, an additional 15 milliliters must be collected. The total to be collected should be of sufficient quantity for all analyses and reanalyses and must be predetermined by each licensee. If there is less than the required quantity of urine in the container, additional urine must be collected to reach the required quantity. Each successive void must be collected in a separate container. (The temperature of any partial specimen in its separate container must be measured in accordance with paragraph (g)(13) of this section, and the partial specimens must be inspected and sealed as described below for a full specimen. Upon obtaining the required amount, the partial specimens must be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., normally, an 8 oz. glass of water every 30 minutes, but not to exceed a maximum of 24 oz.). If the individual fails for any reason to provide a sufficient quantity of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

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(13) Immediately after the urine specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The licensee shall determine the temperature range within which the specimen temperature must fall based on the type of temperature measuring devices used, and shall clearly specify the temperature range in its collection procedures. The temperature range of an acceptable urine specimen must be designated by the licensee and must be within a band of 3 °C/6 °F or less, with a lower limit not lower than 34 °C/94 °F. The time from urination to temperature measurement is critical and must in no case exceed 4 minutes.

(14) Immediately after a urine specimen is collected, the collection site person shall also inspect the specimen to determine its color and clarity and look for any signs of contaminants or adulteration. Any unusual findings must be noted on the chain-of-custody form.

(15) An acceptable specimen is free of any contaminants, meets the required quantity of at least 30 ml, and is within the acceptable temperature range and not less than 34 °C/94 °F.

(i) An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(ii) If there is a reason to believe that the individual may have altered or substituted the specimen because one or more of the acceptance criteria is not met or there is other reason to believe that the individual is attempting to subvert the testing process, another specimen must be collected immediately under direct observation of a same gender collection site person. If a collection site person of the same gender is not available, the licensee shall select a same gender observer. The same measurements must be performed on the second specimen, and both specimens must be forwarded to the laboratory for testing.

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(18) Alcohol breath tests must be performed by using evidential-grade equipment as specified in section 2.7(o)(3) of this appendix. The equipment must be operated in accordance with the manufacturer's instructions by individuals trained and proficient in the use of the equipment. The screening test consists of analyzing two breath specimens on the same piece of equipment. If there is reason to believe a source of alcohol in the mouth exists (e.g., breath freshener or stomach contents) and the testing device does not have built-in protection for the condition, the collection of the first screening breath specimen must be delayed 15 minutes to allow for dissipation of the material. If the analysis of the first breath specimen is essentially zero (less than 0.01 percent BAC), the test is considered negative and no further testing is required. For each individual whose first screening breath specimen is at or above 0.01 percent BAC, a second breath specimen is to be collected and compared after two minutes but no later than 10 minutes after the first specimen is collected. If the two specimens are within plus or minus 10 percent of the average of the two measurements, then the test result is considered accurate. If the tests of the two specimens are not accurate, the series of two breath tests must be repeated on another evidential-grade breath analysis device ensuring that the plus or minus 10 percent accuracy is achieved. If the result of this screening test is greater or equal to 0.02 percent BAC, a confirmatory test is to be accomplished. The confirmatory test is a repeat of the screening test procedure done on another evidential-grade breath analysis device.

(19) If the alcohol breath tests indicate that the individual is positive for a BAC at or above the 0.04 percent cut-off level or that the individual may have been positive for a BAC at or above the 0.04 percent cut-off level during any scheduled working tour (i.e., has a confirmatory test result between 0.02 percent BAC and 0.04 percent BAC), the individual may request a blood test, at his or her discretion, for the purposes of obtaining additional information that could be considered during an appeal. The blood specimen should be drawn immediately, if possible. If a blood specimen cannot be drawn immediately, the procedure for calculating a BAC level from delayed collection of breath specimens and the extrapolation of BAC results (as per section 26.24(h) and described in section 2.9(i) of this appendix) must be followed for the blood specimen. All vacuum tube and needle assemblies used for blood collection must be factory-sterilized. The collection site person shall ensure that they remain properly sealed until used. Antiseptic swabbing of the skin must be performed with a nonethanol antiseptic. Sterile procedures must be followed when drawing blood and transferring the blood to a storage container; in addition, the container must be sterile and sealed.

(20) Both the individual being tested and the collection site person shall keep urine and blood specimens in view at all times before their being sealed and labeled. If a urine specimen is split (as described in section 2.7(k)) and if any specimen is transferred to a second container, the collection site person shall request the individual to observe the splitting of the urine sample or the transfer of the specimen and the placement of the tamper-evident seal over the container caps and down the sides of the containers.

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(23) The individual shall initial the identification labels on the specimen bottles for the purpose of certifying that it is the specimen collected from him or her. The specimen bottles must be securely sealed to prevent undetected tampering. The individual must also be asked to read and sign a statement on the chain-of-custody form certifying that the specimens identified as having been collected from him or her are in fact the specimens he or she provided.

(24) Agreement of the MRO, other designated medical professional, or a higher level supervisor of the collection site person, must be obtained in advance of each decision to obtain a urine specimen under direct observation as specified in paragraph (g)(15) of this section.

(25) The collection site person shall complete the chain-of-custody forms for both the primary specimen and the split specimen, if collected, and shall certify proper completion of the collection.

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(27) While any part of the above chain-of-custody procedures is being performed, it is essential that the specimens and custody documents be under the control of the involved collection site person. The collection site person must not leave the collection site in the interval between presentation of the specimen by the individual and securement of the specimens with identifying labels bearing the individual's specimen identification numbers and seals initialed by the individual. If the involved collection site person leaves his or her work station momentarily, the sealed specimens and chain-of-custody forms must be taken with him or her or must be secured. If the collection site person is leaving for an extended period of time, the specimens must be packaged for transfer to the laboratory before he or she leaves the collection site.

(h) ''Collection Control.'' To the maximum extent possible, collection site personnel must keep the individual's specimen containers within sight both before and after the individual has urinated or provided a blood specimen. After the specimen is collected and whenever urine specimens are split, they must be properly sealed and labeled to prevent undetected tampering. The collection site person shall sign or initial and date the specimen seal. A chain-of-custody form must be used for maintaining control and accountability of each specimen including split specimens from the point of collection to final disposition of the specimen. The date and purpose must be documented on the chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain of custody must be identified. Every effort must be made to minimize the number of persons handling specimens.

(i) ''Specimen Preparation and Transportation to Laboratory or Testing Facility.'' Collection site personnel shall arrange to transfer the collected specimens to the drug testing laboratory or licensee testing facility. To minimize false negative results from specimen degradation, specimens must be sent to the HHS-certified laboratory as soon as reasonably possible but in no case should the time between specimen shipment and receipt of the specimen at the HHS-certified laboratory exceed 48 hours, or the time between shipment and screening test at the HHS-certified laboratory exceed 72 hours. Collected urine specimens must be shipped to the HHS-certified laboratory, or cooled to not more than 6 degrees centigrade (42.8°F), within 6 hours of collection. Sealed and labeled specimen bottles being transferred from the collection site to the drug testing laboratory must be placed in a second, tamper-evident shipping container which must be designed to minimize the possibility of damage to the specimen during shipment (e.g., specimen boxes, padded mailers, or bulk insulated shipping containers with that capability) so that the contents of the shipping containers are no longer accessible without breaking a tamper-evident seal. The collection site personnel shall ensure that the chain-of-custody documentation is attached to each urine specimen bottle.

(j) ''Failure to Cooperate.'' If the individual refuses to cooperate with the urine collection or breath analysis process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen), then the collection site person shall inform the appropriate authority and shall document the non-cooperation on the specimen chain-of-custody form. The failure to cooperate must be reported immediately to the Medical Review Officer, the FFD Program Manager, or to other management having a need to know, as appropriate, for further action. The provision of a blood specimen for use in an appeal of a positive breath test for alcohol must be entirely voluntary, and must be at the individual's option.

25. In section 2.5 of Appendix A to part 26, paragraph (a)(5) is revised to read as follows:

2.5 HHS-Certified Laboratory Personnel

(a) * * *

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual must be reviewed, signed, and dated by this

responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the laboratory. Copies of all procedures and dates on which they are in effect must be maintained. (Specific contents of the procedure manual are described in section 2.7(p) of this appendix).

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26. In section 2.6 of Appendix A to part 26, paragraph (a) is revised to read as follows:

2.6 Licensee Testing Facility Personnel

(a) ''Day-to-Day Management of Operations.'' Any licensee testing facility shall have an individual to be responsible for day-to-day operations and to supervise the testing technicians. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences, medical technology, or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the licensee testing facility, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to detecting aberrant test or quality control results.

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27. Section 2.7 of Appendix A to part 26, paragraphs (e) through (o) are redesignated (f) through (p), new paragraphs (e), (f)(3), (g)(6), and (p)(6) are added, and paragraphs (b)(1), (c), (d), (f)(1), (g) (1), (2), (3), and (5), (h) (1), (2), (3), (5), and (6), (i), (j), (k), (m)(2), (n), and (p) (1), (2), and (3)(ii) are revised to read as follows:

2.7 Laboratory and Testing Facility Analysis Procedures

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(b) ''Receiving.'' (1) When a shipment of specimens is received, laboratory and the licensee's testing facility personnel shall inspect each package for evidence of possible tampering and compare information on specimen containers within each package to the information on the accompanying chain-of-custody forms. Any direct evidence of tampering or discrepancies in the information on specimen containers and the licensee's chain-of-custody forms must be reported by the HHS-certified laboratory within 24 hours to the licensee and must be noted on the laboratory's chain-of-custody form which must accompany the specimens while they are in the laboratory's possession. Indications of tampering with specimens at a testing facility operated by a licensee must be reported within 8 hours to senior licensee management.

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(c) ''Short-Term Refrigerated Storage.'' Specimens that do not receive a screening test and, if appropriate, a confirmatory test within one day of arrival at the HHS-certified laboratory, or are not shipped within 6 hours of collection from the licensee's collection or testing facility, as well as any retained split specimens, must be placed in secure refrigeration units or other means of securely maintaining the specimens in a chilled condition until testing or shipment. Temperatures must not exceed 6 °C/43 °F. Contingency measures must be available to maintain the specimens in a chilled state in case of prolonged power failure.

(d) ''Specimen Processing.'' Urine specimens identified as unconfirmed positive or as questionable for adulteration or dilution by a licensee's testing facility must be shipped to an HHS-certified laboratory for testing. Laboratory facilities for drug testing will normally process urine specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either screening or confirmatory tests at either the licensee's testing facility or an HHS-certified laboratory, every batch must contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test specimens must appear as ordinary specimens to laboratory analysts. Special processing may be conducted to analyze specimens suspected of being adulterated or diluted (including hydration). Any evidence of adulteration or dilution, and any detected trace amounts of drugs or metabolites, must be reported to the Medical Review Officer. The Medical Review Officer shall report any adulteration or dilution evidence (excluding hydration resulting from an acceptable reason) to management immediately.

(e) ''Determining Specimen Validity.'' Specimens must be tested at a licensee's testing facility, if the licensee conducts screening tests, and at an HHS-certified laboratory to determine their validity and to detect evidence of adulteration or dilution. At a minimum, such testing must include analysis of specific gravity (SG) before being subjected to screening testing. Devices used to determine validity of the specimen must be accurate and not contaminate the specimen. A specimen acceptable for testing using the cut-off levels in paragraphs (f)(1) and (g)(2) of this section has a specific gravity greater than 1.003 and is free of detectable adulterants. Specimens determined to be of questionable validity that show evidence of dilution must be subject to both screening and confirmation testing using the limit of detection (LOD) that the laboratory is capable of performing. If the specimen's specific gravity (SG) is less than 1.001, or if there is reason to believe that the specimen has been adulterated, the laboratory need not conduct LOD testing and must report the possibly adulterated or diluted condition to the Medical Review Officer. When the MRO cannot determine if the specimen is valid or invalid, another specimen must be collected as soon as possible under the provisions of section 2.4(f) of this appendix.

(f) '' Onsite and Laboratory Screening Tests.''

(1) For the analysis of urine specimens, any screening test performed by a licensee's testing facility and the screening test performed by an HHS-certified laboratory must use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The screening test of breath for alcohol performed at the collection site must use a breath measurement device which meets the requirements of paragraph (p)(3) of this section. The following initial cut-off levels must be used when screening specimens to determine whether they are negative for the indicated substances:

SCREENING TEST CUT-OFF LEVEL
(ng/ml)

Marijuana metabolites	50.
Cocaine metabolites	300.
Opiate metabolites[1]	300.
Phencyclidine	25.
Amphetamines	1,000.
Alcohol[2]	0.04% BAC.

[1] 25 ng/ml is immunoassay specific for free morphine.

[2] Percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In addition, licensees may specify more stringent cut-off levels. In such cases, the results of HHS screening tests must be reported for both levels. Only the more stringent tests need be conducted, and the results for the cut-off levels above may be calculated.

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(3) Multiple screening tests (also known as rescreening) for the same drug class may be performed on:

(i) Unconfirmed positive specimens (e.g., an unconfirmed positive for amphetamines) only when needed to reduce the effect of possible cross reactivity due to structural analogs;

(ii) Those specimens where a valid analytical result cannot be obtained using one particular immunoassay technique due to interference in the assay (e.g., prescription medication); or

(iii) Unconfirmed positive specimens that appear to have a high concentration of drugs or metabolites to determine an appropriate dilution requirement for GC/MS confirmation analysis.

(g) ''Confirmatory Test.'' (1) Specimens which test negative as a result of a screening test must be reported as negative to the licensee and will not be subject to any further testing unless special processing of the specimen is desired because adulteration or dilution is suspected.

(2) All urine specimens identified as unconfirmed positive on the screening test performed by a HHS-certified laboratory must be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cut-off values listed in this paragraph for each drug, or at the cut-off values required by the licensee's unique program, where differences exist. All confirmations must be made by quantitative analysis. Concentrations which exceed the linear region of the standard curve must be documented in the laboratory record as ''greater than highest standard curve value.''

CONFIRMATORY TEST CUT-OFF LEVEL
(ng/ml)

Marijuana metabolite [1]	15.
Cocaine metabolite [2]	150.
Opiates:	
Morphine	300.
Codeine	300.
Phencyclidine	25.
Amphetamines:	
Amphetamine	500.
Methamphetamine [3]	500.
Alcohol [4]	40.04% BAC.

[1] 1Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.
[3] Specimen must also contain amphetamine at a concentration ≥200 ng/ml.
[4] Percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In addition, licensees may specify more stringent cut-off levels. In such cases, the results must be reported for both levels. Only the more stringent tests need be conducted, and the results for the cut-off levels above may be calculated.

(3) The analytic procedure for analysis of blood specimens voluntarily provided by individuals testing positive for alcohol on a breath test must be gas chromatography analysis.

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(5) Confirmatory tests for opiates must include a test for 6-acetylmorphine (AM).

(6) Specimens that have a positive GC/MS test result for amphetamines must be tested for the d and l isomers. The results of this additional test must be reported to the MRO. Laboratory quality control and inspection criteria must be included for this additional test.

(h) ''Reporting Results.'' (1) The HHS-certified laboratory shall report test results to the licensee's Medical Review Officer within 4 working days (6 for suspected amphetamines) after receipt of the specimen by the laboratory. Before any test result is reported, the results of screening tests, confirmatory tests, and quality control data, as applicable, must be reviewed and the test certified as an accurate report by the responsible individual at the laboratory. The report must identify the substances tested for, whether positive or negative; the cut-off(s) for each; the specimen number assigned by the licensee; any indications of tampering, adulteration, or dilution that may be present; and the drug testing laboratory specimen identification number.

(2) The HHS-certified laboratory and any licensee testing facility shall report as negative all specimens, except suspect specimens being analyzed under special processing, which are negative on the screening test or negative on the confirmatory test. Specimens testing positive on the confirmatory analysis must be reported positive for a specific substance. Except as provided in § 26.24(d), unconfirmed positive results of screening testing at the licensee's testing facility will not be reported to licensee management. The MRO's staff may perform routine administrative support functions, including receipt of test results and scheduling interviews for the MRO.

(3) The Medical Review Officer may routinely obtain from the HHS-certified laboratory, and the laboratory must provide, quantitation of test results. The Medical Review Officer may only disclose quantitation of test results for an individual to licensee management if required in an appeals process, or to the individual under the provisions of § 26.29(c). (This does not preclude the provision of program performance data under the provisions of 10 CFR 26.71(d).) Quantitation of negative tests for urine specimens shall not be disclosed, except where deemed appropriate by the Medical Review Officer for proper disposition of the results of tests of suspect specimens. Alcohol quantitation for a blood specimen must be provided to licensee management with the Medical Review Officer's evaluation.

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(5) The laboratory shall retain the original chain-of-custody form and must send only to the Medical Review Officer certified true copies of the original chain-of-custody form and the test report. In the case of a laboratory-confirmed positive or special processing of suspect specimens, the document must be signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports. Laboratories must retain these documents consistent with the requirements contained in section 2.2(a) of this appendix.

(6) The HHS-certified laboratory and the licensee's testing facility shall provide to the licensee official responsible for coordination of the fitness-for-duty program a monthly statistical summary of urinalysis and blood testing and shall not include in the summary any personal identifying information. Initial test data from the licensee's testing facility and the HHS-certified laboratory, and confirmation data from HHS-certified laboratories must be included for test results reported within that month. Normally this summary must be forwarded from HHS-certified laboratories by registered or certified mail and from the licensee's testing facility not more than 14 calendar days after the end of the month covered by the summary. The summary must contain the following information:

(i) Screening Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

(*1*) Marijuana metabolites;

(*2*) Cocaine metabolites;

(*3*) Opiate metabolites;

(*4*) Phencyclidine;

(*5*) Amphetamines; and

(*6*) Alcohol.

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(i) ''Long-Term Storage.'' Long-term frozen storage (−20 °C or less) ensures that any urine specimens that have been associated with personnel actions will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the licensee, HHS-certified laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens that have been confirmed positive, or that have been adulterated or diluted. Within this 1-year period, a licensee or the NRC may request the laboratory to retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after the end of 1 year. The laboratory must maintain any specimens under legal challenge for an indefinite period. Any split specimens retained by the licensee must be transferred into long-term storage upon determination by the Medical Review Officer that the specimen has a laboratory confirmed positive test.

(j) ''Retesting Specimens.'' Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cut-off requirement but must provide data sufficient to confirm the presence of the drug or metabolite. For the retesting of specimens that have been determined to have been adulterated or diluted, the retest need only confirm that the specimen is not valid.

(k) ''Split Specimens.'' Urine specimens may be split, at the licensee's discretion, into two parts at the collection site. One half of such specimens (hereafter called the primary specimen) must be analyzed by the licensee's testing facility or the HHS-certified laboratory for the licensee's purposes as described in this appendix. The other half of the specimen (hereafter called the split specimen) may be withheld from transfer to the laboratory, sealed, and stored in a secure manner by the licensee until all processing of the primary specimen has been completed. If the primary specimen is determined to be negative and free of any evidence of subversion, the split specimen in storage may be destroyed. If the unconfirmed positive result of a screening test has been confirmed, or if the primary specimen is determined to have been subject to adulteration, dilution, or other means of testing subversion, the tested individual may request in a timely manner (as established by the licensee, but not to be restricted to less than 72 hours from the time of the individual's notification of the screening test result) that the split specimen be tested. The individual must be informed of this option. The split specimen must be forwarded on the day of the request to another HHS-certified laboratory that did not test the primary specimen. The chain-of-custody and testing procedures to which the split specimen is subject must be the same as those used to test the primary specimen and must meet the standards for retesting specimens. In other words, the quantification of the result is not subject to a specific cut-off requirement but must provide data sufficient to confirm the presence of the drug or metabolite (section 2.7(j) of this appendix). The quantitative results of any second testing process shall be made available to the Medical Review Officer and to the individual tested. Except as noted in this section, all other requirements of this appendix applicable to primary specimens shall also be applicable to split specimens.

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(m) ''Laboratory Facilities.''

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(2) HHS-certified laboratories must have the capability, at the same laboratory premises, of performing screening and confirmatory tests for each drug and drug metabolite for which service is offered and for blood analysis for alcohol content (BAC). Any licensee testing facilities must have the capability, at the same premises, of performing screening tests for each drug and drug metabolite for which testing is conducted. Breath tests for alcohol may be performed at the collection site.

(n) ''Inspections and Audits.'' The NRC and any licensee utilizing an HHS-certified laboratory reserves the right to inspect or audit the laboratory at any time. Licensee contracts with HHS-certified laboratories for drug testing and analyses of blood for alcohol content (BAC), as well as contracts for collection site services, must permit the NRC and the licensee to conduct unannounced inspections and audits and to obtain all information and documentation reasonably relevant to the inspections and audits. Licensee contracts with HHS-certified laboratories must also provide the licensee and the NRC with the ability to obtain copies of any documents, including reviews and inspections pertaining to the laboratory's certification by HHS, and any other data that may be needed to assure that the laboratory is performing its testing and quality control functions properly and that laboratory staff and procedures meet applicable requirements. Annual licensee inspections and audits of HHS-certified laboratories must include review of inspection reports made under the HHS-certification program but need not duplicate areas covered by the HHS inspection. In addition, before the award of a contract, the licensee shall carry out pre-award inspections and evaluation of the procedural aspects of the laboratory's drug testing operation. If an HHS-certified laboratory loses its certification, in whole or in part, a licensee is permitted to immediately use an HHS-certified laboratory that has been audited by another NRC licensee having a compatible drug panel and cut-off standards. The licensee shall audit the newly contracted HHS-certified laboratory within three months. The NRC reserves the right to inspect a licensee's testing facility at any time.

* * * * *

(p) ''Additional Requirements for HHS-Certified Laboratories and Licensees' Testing Facilities.''

(1) ''Procedure manual.'' Each laboratory and licensee's testing facility shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cut-off values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect must be maintained as part of the manual. Each HHS-certified laboratory shall retain a copy of its latest procedure manual as a record until at least 2 years after it is no longer under contract to an NRC licensee to test specimens of urine for drugs. Each licensee shall retain a copy of its latest procedure manual as a record until it is no longer conducting on-site testing of specimens of urine for drugs. Superseded material must be retained for at least three years.

(2) ''Standards and controls.'' HHS-certified laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards must be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date. All standards used to calibrate alcohol breath analysis equipment and equipment used at licensees' testing facilities for conducting screening tests must be current and valid for their purpose.

(3) ''Instruments and equipment.''

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(ii) Alcohol breath analysis equipment must be an evidential-grade breath alcohol analysis device of a brand and model that conforms to National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855; December 14, 1984 or 58 FR 48705; September 17, 1993) and to any applicable State statutes.

* * * * *

(6) ''Restrictions.'' The laboratory shall not enter into any relationship with a licensee's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having a licensee use a specific MRO.

28. In section 2.8 of Appendix A to part 26, paragraphs (a), (b), (c), and (e) are revised, and new paragraph (f) is added to read as follows:

2.8 Quality Assurance and Quality Control

(a) ''General.'' HHS-certified laboratories and the licensee's testing facility shall have a quality assurance program which encompasses all aspects of the testing process including, but not limited to, specimen acquisition, chain of custody, security, reporting of results, screening and confirmatory testing, and validation of analytical procedures. Quality assurance procedures must be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) ''Licensee's Testing Facility Quality Control Requirements for Screening Tests.'' Because all unconfirmed positive licensee facility screening tests for drugs are forwarded to an HHS-certified laboratory for screening and confirmatory testing when appropriate, the NRC does not require licensees to assess their testing facility's false positive rates for drugs. To ensure that the rate of false negative tests is kept to the minimum that the immunoassay technology supports, licensees shall perform an immunoassay test on all blind performance test specimens and submit these and a sampling of specimens screened as negative from every test run to the HHS-certified laboratory. The results reported by the certified laboratory must be evaluated and appropriate corrective actions taken. The manufacturer-required performance tests of the breath analysis equipment used by the licensee must be conducted as set forth in the manufacturer's specifications.

(c) ''Laboratory Quality Control Requirements for Screening Tests at HHS-Certified Laboratories.'' (1) Each analytical run of specimens to be screened must include:

(i) Urine specimens certified to contain no drug;

(ii) Urine specimens fortified with known standards; and

(iii) Positive controls with the drug or metabolite at or near the threshold (cut-off).

(2) In addition, with each batch of specimens, a sufficient number of standards must be included to ensure and document the linearity of the assay method over time in the concentration area of the cut-off. After acceptable values are obtained for the known standards, those values will be used to calculate specimen data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen must be documented. A minimum of 10 percent of all test specimens must be quality control specimens. Laboratory quality control specimens prepared from spiked urine specimens of determined concentration, must be included in the run and should appear as normal specimens to laboratory analysts. One percent of each run, with a minimum of at least one specimen, must be the laboratory's own quality control specimens.

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(e) ''Licensee Blind Performance Test Procedures.'' (1) Licensees shall only purchase blind quality control materials that:

(i) Have been certified by immunoassay and GC/MS; and

(ii) Have stability data which verify performance of those materials over time.

(2) During the initial 90-day period of any contract with an HHS-certified laboratory (not including rewritten or renewed contracts), each licensee shall submit blind performance test specimens to the laboratory within the amount of at least 20 percent of the total number of specimens submitted (up to a maximum of 100 specimens) or 30 blind performance test specimens, whichever is greater. Following the initial 90-day period, a minimum of 3 percent of all specimens (to a maximum of 25) or 10 blind performance test specimens, whichever is greater, must be submitted per quarter. Licensees should make an attempt to submit blind performance test specimens during the initial 90-day period and per quarter thereafter at a frequency that corresponds with the submission frequency for other specimens.

(3) Approximately 50 percent of the blind performance test specimens must be blank (i.e., certified to contain no drug) and the remaining specimens must be positive for one or more drugs per specimen in a distribution such that all the drugs for which the licensee is testing are included in approximately equal frequencies of challenge. The positive specimens must be spiked only with those drugs for which the licensee is testing. In addition, 10 percent of the positive blind specimens must be

appropriately adulterated or diluted and ''spiked'' to 60 percent of the cut-off value to challenge the laboratory's ability to determine specimen validity, as required by section 2.7 (e) of this appendix.

(f) ''Investigation of Errors and Other Matters.''

(1) The licensee shall investigate any testing errors or unsatisfactory performance discovered in blind performance testing, in the testing of actual specimens, or through the processing of appeals and MRO reviews, as well as any other errors or matters that could reflect adversely on the integrity of the testing process. The investigation must determine relevant facts and identify the root cause(s) of the testing or process error when possible. The licensee and the laboratory shall take action to correct the cause of any errors or the unsatisfactory performance that are within their control. A record must be made and retained for a minimum of three years of the investigative findings and the corrective action taken, and, where applicable, that record must be dated and signed by the individuals responsible for the day-to-day management and operation of the HHS-certified laboratory. The licensee shall submit to the NRC a report of any incident and action taken or planned within 30 days of completion of the investigation. The NRC shall ensure notification of the finding to HHS.

(2) Should a false positive error occur on a blind performance test specimen or on a regular test specimen, the licensee shall promptly notify the NRC. The licensee shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future. If there is reason to believe the error could have been systematic, the licensee may also require review and reanalysis of previously run specimens.

(3) Should a false positive error be determined to be technical or methodological, the licensee shall instruct the laboratory to submit to it all quality control data from the batch of specimens which included any false positive specimen. In addition, the licensee shall require the laboratory to retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting must be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's substance testing program. The licensee and the NRC may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the NRC, HHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

29. Section 2.9 of Appendix A to part 26 is revised to read as follows:

2.9 Reporting and Review of Results

(a) ''Medical Review Officer shall review results.'' An essential part of a licensee's testing program is the final review of results. A laboratory confirmed positive test result does not automatically identify a nuclear power plant worker as having used substances in violation of the NRC's regulations or the licensee's company policies. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review must be performed by the Medical Review Officer before the transmission of results to licensee management officials.

(b) ''Medical Review Officer—qualifications and responsibilities.'' The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders. The MRO may be a licensee or contract employee. However, the MRO shall not be an employee or agent of or have any financial interest in a laboratory or a contracted operator of an on-site testing facility whose drug testing results the MRO is reviewing for the licensee. Additionally, the MRO shall not derive any financial benefit by having the licensee use a specific drug testing laboratory or on-site testing facility operating contractor or have any agreement with such parties that may be construed as a potential conflict of interest. The role of the Medical Review Officer is to review and interpret laboratory confirmed positive test results obtained through the licensee's testing program and to identify evidence of subversion of the testing process. The MRO is also responsible for identifying issues associated with the collection and testing of specimens, and advising and assisting management in the planning and oversight of the overall FFD program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any laboratory confirmed positive test result (this does not include confirmation of blood alcohol levels obtained through the use of a breath alcohol analysis device). This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a laboratory confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not consider the results of tests that are not obtained or processed in accordance with this appendix, although he or she may consider the results of tests on split specimens in making his or her determination, as long as those split specimens have been stored and tested in accordance with the procedures described in this appendix.

(c) ''MRO Verification of Positive Test Results.'' Before making a final decision to verify a laboratory confirmed positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result with him or her. Following verification of a laboratory confirmed positive test result as a violation of FFD policy, the Medical Review Officer shall, as provided in the licensee's policy, immediately notify the applicable employee assistance program and the licensee's management official empowered to recommend or take administrative action (or the official's designated agent). Unconfirmed test results must not be reported except as provided by § 26.24(d).

(d) ''Verification for opiates.'' Before the Medical Review Officer verifies a laboratory confirmed positive result as a violation of FFD policy and the licensee takes action for opiates, he or she shall determine that there is reasonable and substantial clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). Clinical evidence may include substantial evidence of a significant lack of reliability or trustworthiness on the part of the worker. Clinical signs of abuse include recent needle tracks or test results that are inconsistent with the ingestion of food or medication including prescription medications containing opiates (e.g., 6–AM test); clinical signs of abuse also include behavioral and psychological signs of acute opiate intoxication or withdrawal. This requirement does not apply if the GC/MS confirmation testing for opiates confirms the presence of 6-acetylmorphine.

(e) ''Reanalysis authorized.'' Should any question arise as to the accuracy or validity of a laboratory confirmed positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original specimen and such retests are authorized only at laboratories certified by HHS. The Medical Review Officer shall authorize a reanalysis of the original aliquot on timely request (as established by the licensee, but not to be restricted to less than 72 hours from the time of the individual's notification of the laboratory confirmed positive test result) of the individual tested, and shall also authorize an analysis of any split specimen stored by or for the licensee under the provisions of section 2.7(k) of this appendix.

(f) ''Results consistent with responsible substance use.'' If the Medical Review Officer determines that there is a legitimate medical explanation for the laboratory confirmed positive test result, and that the use of the substance identified through testing was in the manner and at the dosage prescribed, and the results do not reflect a lack of reliability or trustworthiness, then there has not been a violation of licensee policy. The Medical Review Officer shall report the test result to the licensee as negative. The Medical Review Officer shall further evaluate the result and medical explanation to determine if there is a potential risk to public health and safety of the individual being impaired on duty from the substance or from the medical condition. If the MRO determines that such a risk exists, he or she shall conduct a medical determination of fitness.

(g) ''Medical determination of fitness.'' (1) Occasions when a medical determination of fitness, as defined in § 26.3, must be conducted include, but are not limited to, the following:

(i) When an alternative medical explanation explains the test result but there is a basis for believing impairment on duty could exist, as described in paragraph (f) of this section;

(ii) In the evaluation of all for-cause test results;

(iii) Before making return-to-duty recommendations subsequent to a worker's removal from duty in accordance with § 26.27(b) or the licensee's fitness-for-duty policy;

(iv) Before an individual being granted unescorted access when a statement from an individual obtained pursuant to § 26.27(a) shows a history of substance abuse or record of prior fitness-for-duty violations; and

(v) If a history of substance abuse is otherwise identified.

(2)(i) If the licensed physician or MRO determines that there is neither conclusive evidence of a policy violation nor a significant basis for concern that the individual may be impaired while on duty, then he or she shall report the result as negative.

(ii) If the licensed physician or MRO determines that there is not conclusive evidence of a policy violation but that there is a significant basis for concern that the individual may be impaired while on duty, then he or she shall report the result as not representing an FFD violation but as a condition under which the individual may not be able to safely and competently perform duties. Because these results should not constitute a violation of the licensee's policy or the NRC rule, punitive actions under the rule should not be taken based upon the results. However, the licensed physician, MRO, or the licensee management personnel who are empowered to take appropriate actions shall initiate actions to ensure that any possible limiting condition does not represent a threat to workplace or public health and safety. When deemed appropriate, the matter may also be referred to the EAP.

(h) Breath alcohol content indicating a blood alcohol concentration between 0.02 percent and 0.04 percent must be reported to the MRO for review and evaluation. The MRO shall determine whether it is appropriate to extrapolate back in time to estimate the highest BAC that the worker had while on duty with the assumption that no alcohol was consumed while on duty. In these cases, the MRO will calculate a range of possible peak BACs that could have existed while the worker was on duty and make a determination whether the result is a confirmed positive test for alcohol. A similar extrapolation process must be conducted for the results of an analysis of a blood specimen for alcohol, as provided by § 26.24(h).

(i) ''Result scientifically insufficient.'' Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple specimens, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation, the Medical Review Officer may request reanalysis of the original specimen before making this decision. The Medical Review Officer may request that reanalysis be performed by the same laboratory, or that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the HHS Guidelines. The licensee's testing facility and the HHS-certified laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual(s) responsible for day-to-day management of the licensee's test facility, of the HHS-certified laboratory or other individuals who are forensic toxicologists or who have equivalent forensic experience in urine drug testing, to provide specific consultation as required by the licensee. The licensee shall maintain for a minimum of three years, records that summarize any negative findings based on scientific insufficiency and shall make them available to the NRC on request, but shall not include any personal identifying information in such reports.

Appendix A [Amended]

30. Section 3.2 of Appendix A is removed.

31. In section 4.1 of Appendix A to part 26 is revised to read as follows:

4.1 Use of HHS-Certified Laboratories

(a) Licensees subject to this part and their contractors shall use only laboratories certified under the HHS ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', Subpart C—''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' (53 FR 11970, 11986–11989) dated April 11, 1988, and subsequent amendments thereto for screening and confirmatory testing except for screening tests at a licensee's testing facility conducted in accordance with § 26.24(d). Information concerning the current certification status of laboratories is available from: The Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857.

(b) Licensees or their contractors may use only HHS-certified laboratories that agree to follow the same rigorous chemical testing, quality control, and chain-of-custody procedures when testing for more stringent cut-off levels as may be specified by licensees for the classes of drugs identified in this part, for analysis of blood specimens for alcohol, and for any other substances included in licensees' drug panels. Because the HHS-certification process does not apply to these matters, the defensibility of such tests depends on appropriate measures by licensees to assure the reported test results are valid.

(c) All contracts related to this part between licensees and their contractors and HHS-certified laboratories must require implementation of all obligations of this appendix applicable to HHS-certified laboratories.

Dated at Rockville, Maryland, this 29th day of April, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–11046 Filed 5–8–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN–2A and BN2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 75–26–15, which currently requires repetitively inspecting the aileron mass balance clamp unit attachment for looseness on Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A and BN2A MK. 111 series airplanes, and modifying the aileron and mass balance clamp unit if any looseness is found. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would retain the repetitive inspections required by AD 75–26–15, and would require modifying the aileron and mass balance unit (at a certain time) as terminating action for the repetitive inspections. The actions specified in the proposed AD are intended to prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane.

DATES: Comments must be received on or before July 19, 1996.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Officer,

Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2715; facsimile (32 2) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–16–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Pilatus Britten-Norman BN–2A and BN2A MK. 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 75–26–15, Amendment 39–2464, as one that should be superseded with a new AD that would require incorporating a modification that would eliminate the need for short-interval and critical repetitive inspections. AD 75–26–15 currently requires repetitively inspecting the attachment of the aileron mass balance clamp unit for looseness on Pilatus Britten-Norman BN–2A and BN2A MK. 111 series airplanes, and modifying any aileron and mass balance clamp unit where looseness is found. Accomplishment of the inspections and modification required by AD 75–26–15 is in accordance with Britten-Norman Service Bulletin No. BN–2/SB.67, Issue 1, dated October 24, 1973.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 75–26–15, and to prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN–2A and BN2A MK. 111 series airplanes of the same type design, the proposed AD would supersede AD75–26–15 with a new AD that would (1) retain the requirements of repetitively inspecting the aileron mass balance clamp unit attachment for looseness and modifying any aileron and mass balance unit immediately where looseness is found; and (2) require modifying the aileron and mass balance unit (at a certain time) if not previously required. The modification would terminate the need for the repetitive inspections of the aileron and mass balance unit attachment. Accomplishment of the proposed actions would continue to be in accordance with Britten-Norman Service Bulletin No. BN–2/SB.67, Issue 1, dated October 24, 1973.

The FAA estimates that 109 airplanes in the U.S. registry would be affected by the proposed AD, that would take approximately 10 workhours (inspection: 1 workhour; modification: 9 workhours) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $160 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $82,840. This figure only takes into account the cost of the proposed initial inspection and proposed inspection-terminating modification and does not take into account the cost of the proposed repetitive inspections. The FAA has no way of determining the number of repetitive inspections each of the owners/operators would incur over the life of the affected airplanes.

This figure is also based on the assumption that none of the affected airplane owners/operators have accomplished the proposed modification. This action would eliminate the repetitive inspections required by AD 75–26–15. The FAA has no way of determining the operational levels of each individual operator of the affected airplanes, and subsequently cannot determine the repetitive inspection costs that would be eliminated by the proposed action. The FAA estimates these costs to be substantial over the long term.

Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records. The company believes that most of the affected airplanes already have the proposed inspection-terminating modification incorporated.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 109 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 25 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 75percent are operated in

other forms of air transportation such as air cargo and air taxi.

The proposed action would allow 1,000 hours TIS after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory. The time it would take those in air cargo/air taxi operations before the proposed action would be mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75–26–15, Amendment 39–2464, and by adding a new AD to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 96–CE–16–AD. Supersedes AD 75–26–15, Amendment 39–2464.

Applicability: Models BN–2, BN–2A, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–3, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN2A MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD (see NOTE 2 of this AD), inspect the attachment of the aileron mass balance clamp unit for looseness in accordance with the ''Inspection'' section of Britten-Norman Service Bulletin (SB) No. BN–2/SB.67, Issue 1, dated October 24, 1973.

Note 2: The ''prior to first flight of each day after the effective date of this AD'' compliance time required by paragraph (a) of this AD is exactly the same as required by AD 75–26–15 (superseded by this AD).

(b) If a loose attachment of the aileron mass balance clamp unit is found during any of the inspections required by this AD, prior to further flight, modify the aileron and mass balance clamp unit in accordance with the ''b. Sequence of Operations'' section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(c) Within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished as specified and required by paragraph (b) of this AD, modify the aileron and mass balance clamp unit in accordance with the ''b. Sequence of Operations'' section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(d) Accomplishing the modification required by paragraph (b) or (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

Note 4: Alternative methods of compliance approved in accordance with AD 75–26–15 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 75–26–15, Amendment 39–2464.

Issued in Kansas City, Missouri, on May 2, 1996.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11533 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 121

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 653 and 654

[OST Docket No. OST–96–1333 , Notice 96–14]

RIN 2105–AC50

Amendments to Pre-Employment Alcohol Testing Requirements

AGENCIES: Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes provisions that would implement a recent statutory change to the pre-employment alcohol testing provisions of the Omnibus Transportation Employee Testing Act of 1991. The proposal would harmonize the regulations with the statute by making pre-employment testing voluntary for employers.

DATES: Comments should be received by July 8, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST–96–1333., Department of Transportation, 400 7th Street, S.W., Room PL-400, Washington, D.C., 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. We note that, because this is a multi-modal rulemaking, we are, for convenience, designating a docket in the Office of the Secretary to receive comments for all concerned operating administrations.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202-366-9306); 400 7th Street, S.W., Washington D.C., 20590.

SUPPLEMENTARY INFORMATION: In its April 5, 1995, decision in *American Trucking Associations, Inc.* v. *FHWA,* the U.S. Court of Appeals for the Fourth Circuit vacated the FHWA's pre-employment alcohol testing rule and remanded it to the agency for further rulemaking consistent with its opinion. The rule implemented the Omnibus Transportation Employee Testing Act of 1991, which required pre-employment testing ''for use, in violation of law or Federal regulation, of alcohol or a controlled substance.'' The rule required trucking companies to administer pre-employment tests to a new driver. The test could occur at any time up to the performance of the driver's first safety-sensitive activity. This decision did not vacate the pre-employment alcohol testing regulations of the other modes, which were not before the court, but these regulations were based on parallel statutory language, and the rationale of the court's decision applied to them as well.

Because the Court's decision vacated FHWA's pre-employment alcohol testing rule and created substantial uncertainty about the legal validity of the other operating administrations' rules, the Department took action in May 1995 to suspend all four pre-employment alcohol testing rules. As announced by Secretary of Transportation Federico Peña *before* the Court's decision was issued, the Department had decided to transmit a bill to Congress that would make pre-employment alcohol testing discretionary with employers. The Department's proposed legislation was adopted by Congress as § 342 of the National Highway Systems Act of 1995. Section 342 amends the provisions of the Omnibus Transportation Employee Testing Act of 1991 to repeal the requirement that employers conduct pre-employment alcohol testing. In place of the repealed requirement, Congress added a sentence that states ''The [Secretary of Transportation's] regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.'' (§ 342(c); the language of the provisions for the aviation, transit, and railroad industries is parallel.)

To implement this statutory change, the Department's four operating administrations involved—the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration—are proposing to remove their existing (but suspended) pre-employment alcohol testing mandates and substitute a provision that would explicitly authorize, but not require, employers to conduct such testing as part of their DOT-based drug and alcohol testing program. This means that an employer has discretion to conduct preemployment alcohol testing under color of Federal statutory and regulatory authority.

An employer's choice to exercise the option to test under Federal authority would have a number of implications. First, the employer would have to comply with Part 40 procedures for the tests. Second, the employer would have to apply preemployment alcohol testing to all safety-sensitive employees covered by DOT drug and alcohol testing regulations. Third, the employer and employees would necessarily accept the consequences of positive tests under DOT regulations. Fourth, the pre-emption provisions of the Department's regulations would apply to pre-employment alcohol testing under the proposed rules.

Each of the four modal amendments embodies these points. There are some drafting differences among the four provisions, reflecting the differences in the underlying modal provisions. It should also be noted that the language of the modal provisions is intended to permit the testing to take place after a conditional offer of employment, earlier in the hiring process, or after a final commitment but before the first performance of safety-sensitive functions (e.g., before the first time a new driver takes a transit bus out on a route). These three provisions also encompass situations in which an individual who has been working for the employer in another capacity transfers to duties involving the performance of safety-sensitive functions.

It is possible, of course, for an employer to conduct pre-employment alcohol tests under its own authority, with no reference to DOT rules, procedures, or authority. In this case, of course, the exercise of the employer's authority is fully subject to any state laws that may constrain the employer's discretion. If the employer chooses to conduct pre-employment testing under the DOT rules, however, the employer commits itself to conducting the tests in full compliance with those rules.

The Department supported the legislation that became § 342 in the belief that a Federal mandate for pre-employment alcohol testing was not necessary. However, employers may determine that pre-employment alcohol testing is a useful part of their substance abuse prevention policies (e.g., as a means of emphasizing to new employees the employer's commitment to an alcohol abuse-free workplace). The Department believes that the proposed rule will facilitate the efforts of

employers who choose to include this element in their programs.

Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12886. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small entities. The NPRM would not impose any costs or burdens on regulated entities, since it makes pre-employment alcohol testing completely voluntary. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

FAA

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration proposes to amend 14 CFR part 121, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 would continue to read as follows:

Authority: 49 U.S.C. 106(g), 400113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

2. In Appendix J, Sec. III, the heading of Sec. III and subsection A are proposed to be revised to read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

III. Types of Alcohol Tests

A. Pre-employment

1. As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (2)–(4) of this section apply.

2. The employer shall administer pre-employment alcohol tests to each employee prior to the first time the employee performs safety-sensitive functions for the employer.

3. The employer shall conduct the tests using the procedures of 49 CFR part 40.

4. The employer shall not allow a covered employee to perform safety-sensitive functions, unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of Paragraph F of Section V of this appendix apply.

Issued this 2nd day of May, 1996, at Washington, D.C.

David R. Hinson,

Administrator, Federal Aviation Administration.

FRA

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA proposes to amend 49 CFR Part 219, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 would continue to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103-272 (July 5, 1994); and 49 CFR 1.49(m).

2. In § 219.501, paragraphs (a) and (b) are revised to read as follows:

§ 219.501 Pre-employment tests.

(a) Beginning on January 1, 1995, prior to the first time a covered employee performs covered service for a railroad, the employee shall undergo testing for drugs. No railroad shall allow a covered employee to perform covered service, unless an employee has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement shall apply to final applicants for employment and to employees seeking transfer for the first time from non-covered service to duties involving covered service.

(b) As part of its alcohol misuse program under this Part, a railroad is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If a railroad chooses to conduct such testing under this section, the requirements of paragraphs (b) (1) and (2) apply.

(1) No railroad shall allow a covered employee to perform covered service, unless an employee has been administered a test for alcohol with a result indicating an alcohol concentration less than .04. This requirement shall apply to final applicants for employment and to employees seeking transfer for the first time from non-covered service to duties involving covered service.

(2) If the test is result is .02 or greater but less than .04, the applicant or employee shall not perform safety-sensitive functions for the railroad, and the railroad shall not permit the applicant or employee to perform such functions, until the applicant's alcohol concentration measures less than .02.

* * * * *

Issued this 2nd day of May, 1996, at Washington, D.C.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

FHWA

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA proposes to amend 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 would continue to read as follows:

Authority: 49 U.S.C. 31306; 49 U.S.C. app. 31201 et. seq.; 49 U.S.C. 31502; 49 CFR 1.48

2. In section 382.301, paragraphs (a) and (b) are revised to read as follows:

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances. No employer shall allow a driver to perform safety-sensitive functions unless the driver has received a controlled substances test result from the medical review officer indicating a verified negative test result.

(b) As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (b) (1) through (4) apply.

(1) The employer shall administer a pre-employment alcohol test to each driver prior to the first time any driver performs a safety-sensitive function for the employer, unless —

(i) The driver has undergone an alcohol test permitted or required by this part or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six

months, with a result indicating an alcohol concentration of less than 0.04; and

(ii) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(2) Except as provided in paragraphs (b)(i)(1) and (ii) of this section, the employer shall not allow a driver to perform a safety-sensitive function unless the driver has been administered an alcohol test with a result indicating an alcohol concentration of less than 0.04.

(3) If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 382.505 apply.

(4) The employer shall conduct the tests using the procedures of 49 CFR part 40.

* * * * *

3. In § 382.301(d)(1) introductory text, the words ''(1) (i) and (ii)'' are added after the words ''paragraph (b)''.

Issued this 2nd day of May, 1996, at Washington, D.C.

Rodney Slater,

Administrator, Federal Highway Administration.

FTA

List of Subjects

49 CFR Part 653

Drug testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration proposes to amend 49 CFR Part 654, as follows:

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS.

1. The authority for Part 654 would continue to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51

2. Section 654.31 is proposed to be revised to read as follows:

§ 654.31 Pre-employment testing.

(a) As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (b) through (d) apply.

(b) The employer shall administer a pre-employment alcohol test before the first time any covered employee performs a safety-sensitive function for the employer.

(c) The employer shall conduct the tests using the procedures of 49 CFR Part 40.

(d) The employer shall not allow a covered employee to perform safety-sensitive functions, unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 654.65 apply.

Issued this 2nd day of May, 1996, at Washington, D.C.

Gordon J. Linton,

Administrator, Federal Transit Administration.

[FR Doc. 96–11432 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–62–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 80

[CI Docket No. 95–55, FCC 96–194]

Inspection of Radio Installations on Large Cargo and Small Passenger Ships

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* (NPRM) which proposes rules to require that large cargo and small passenger vessels arrange for an inspection of such ships by an FCC-licensed technician. The Commission adopted this NPRM to incorporate changes to the Communications Act related to the inspection of ships and to explore ways to improve the Commission's ship inspection process. The intended effect of these proposed rules is to increase the availability of competent, private sector inspectors to conduct inspections of cargo vessels and small passenger vessels required to be inspected by the Commission without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

DATES: Comments must be filed on or before May 24, 1996, and reply comments must be filed on or before June 3, 1996. Written comments by the public and federal agencies on the proposed and/or modified information collections are due by May 24, 1996. Written comments by OMB on the proposed and/or modified information collections on or before July 8, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* CI Docket No. 95–55, FCC 96–194, adopted April 25, 1996, and released, April 26, 1996. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

This *Notice of Proposed Rule Making* (NPRM) was initiated to incorporate changes to the Communications Act related to the inspection of ships, to explore ways to improve the Commission's ship inspection process, to reduce administrative burdens on the public and the Commission, and to ensure that vessel safety is not adversely affected. Currently, the Commission inspects the radio installations of approximately 1,110 vessels each year subject to the Communications Act or the Safety Convention. The proposed rules will replace the requirement that the Commission inspect such ships with a requirement that ship owners or operators arrange for an inspection by an FCC-licensed technician.

2. Privatization will result in the following benefits:

(a) It will increase the number of experienced entities available to inspect the radio stations of ships.

(b) Privatization will permit ship owners and operators to arrange for inspections at any time or place.

(c) Our proposal for privatization should not adversely affect safety, we are proposing rules that will require two separate certifications that the ship has passed the safety inspection. Additionally, we are coordinating this item with the U. S. Coast Guard.

(d) It will also decrease administrative burdens on the Commission by shifting the responsibility to arrange ship inspections from the Commission to ship owners or operators.

3. The Communications Act requires that the Commission must inspect the radio installation of large cargo ships and certain passenger ships of the United States at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Additionally, the Communications Act requires that the Commission must inspect the radio installation of small passenger vessels as necessary to ensure compliance with the radio installation requirements of the Communications Act. Currently, the Commission inspects small passenger vessels once every five years.

4. The Safety Convention, to which the United States is signatory and which applies to large cargo ships and certain passenger vessels, also requires an annual inspection. The Safety Convention, however, permits an Administration to *entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it.* The United States can, therefore, have either Commission inspectors or other entities conduct the radio station inspections of vessels for compliance with the Safety Convention.

5. The purpose of these inspections is to ensure that passengers and crew members of certain U. S. ships have access to distress communications in an emergency. The 1996 Act adopted the statutory changes in this area requested by the Commission in 1995. In part, these changes permit the Commission to designate entities to perform the inspections required by the Communications Act. We are proposing a significant change to the current rules and procedures regarding safety inspections and request comment on these proposals.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due July 8, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0362.

Title: 80.401 Station documents required.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Large businesses and small businesses.

Number of Respondents: 11,318.

Estimated Time Per Response: 4.48 hours.

Total Annual Burden: 44,478 hours.

Estimated costs per respondent: There are no separate costs.

Needs and Uses: The NPRM proposes to revise the Commission's Rules regarding the inspection of ships for compliance with the Telecommunications Act of 1996 and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention). The NPRM will streamline ship inspection procedures for the maritime services and preserve maritime safety. The information collected will be used to provide a written record of the inspections of radio equipment used to provide distress and safety communications capability during an emergency. Because the safety of ship's crew and passengers during a disaster could be jeopardized if radio communications were not available, the Commission is proposing that the inspecting technician and the ship's owner, operator or captain each certify in the ship's station log that the vessel has passed a safety inspection.

Initial Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in this NPRM. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 19 of the NPRM. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

A. Reason for Action

7. The Commission proposes to require that ships subject to the Communications Act or the Safety Convention must have the required inspection conducted by an FCC-licensed technician.

B. Objectives

8. We seek to promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations wherever possible.

C. Legal Basis

9. The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), and the Safety Convention Chapter I, Regulation 6(a).

D. Reporting, Recordkeeping and Other Compliance Requirements

10. Our proposed amendments to 47 CFR 80.802, 80.851, 80.903 and 80.1067 would require owners and operators of vessels subject to the Communications Act to use an FCC-licensed technician to meet a current inspection requirement.

E. Federal Rules Which Overlap, Duplicate or Conflict with These Rules

11. None.

F. Description, Potential Impact, and Small Entities Involved

12. Use of the private sector to inspect vessels subject to the Communications Act or the Safety Convention would allow better service to the owners and operators of such vessels, many of which are small businesses, and more efficient use of scarce government resources. It would additionally

encourage the creation of jobs to inspect approximately 1,110 vessels each year.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

13. None.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies)

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11612 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1300

[STB Ex Parte No. 528]

Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff requirements formerly applicable to rail carriers, but imposed in lieu thereof certain obligations to disclose common carriage rates and service terms as well as a requirement for advance notice of increases in such rates or changes in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board proposes to add a new part 1300 to its regulations for that purpose as set forth below.

DATES: Comments are due on June 10, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 528 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's decision discussing this proposal is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

Request for Comments

We invite comments on all aspects of the proposed regulations. Comments (an original and 10 copies) must be in writing, and are due on June 10, 1996.

Small Entities

The Board certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. Although many railroads and shippers are small entities, the Board believes that the costs of compliance would be minimal. The proposed rules should result in easier access to rail rate and service information, and to that extent, our proposed action should benefit small entities.

The Board seeks comment on whether there would be effects on small entities that should be considered.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1300

Agricultural products, Disclosure requirement, Fertilizer, Notice requirement, Publication requirement, Rail carriers.

Decided: May 2, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations, is proposed to be amended as follows:

SUBCHAPTER D—CARRIER RATES AND SERVICE TERMS

1. The heading for Subchapter D is revised as set forth above.

2. The undesignated center headings for parts 1300–1319, parts 1320–1329, and parts 1330–1339 are removed.

3. A new part 1300 is added to read as follows:

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

Sec.

Authority: 49 U.S.C. 721(a) and 11101(f).

§ 1300.1 Scope; Definitions.

(a) The provisions of this part address the requirements imposed on rail carriers by 49 U.S.C. 11101(b), 11101(c), 11101(d) and 11101(f).

(b) Except as otherwise provided in this section, the provisions of this part apply to any common carriage transportation or service provided by a rail carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501.

(c) The provisions of this part do not apply to any transportation or service provided by a rail carrier under a contract authorized under 49 U.S.C. 10709 or former 49 U.S.C. 10713.

(d) The provisions of this part do not apply to any transportation or service provided by a rail carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505.

(e) For the purposes of this part, *service terms* means all classifications, rules, and practices that affect the rates, charges, or level of service for rail transportation.

§ 1300.2 Disclosure requirement for existing rates.

(a) A rail carrier must disclose to any person, upon formal request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by that rate(s).

(b) The information provided by a rail carrier under this section must be provided immediately. Such information may be provided either in writing or in electronic form as agreed to by the parties.

§ 1300.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper requests that the carrier establish a rate in the absence of an appropriate applicable rate for particular transportation, the carrier must promptly establish and provide to the requestor, in writing or in electronic form as agreed to by the parties, an appropriate rate and applicable service terms. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible,

but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, within 10 business days.

§ 1300.4 Notice requirement.

(a) A rail carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions), unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

(1) Have formally requested under section 11101(b) the affected rates or service terms; or

(2) Have made a shipment that was subject to the affected rates or terms; or

(3) Have made arrangements with the carrier for a future shipment that would be subject to the affected rates or terms.

(b) The notice required by this section may be in writing or in electronic form, as agreed to by the parties.

(c) For purposes of this section, a mailed notice is deemed ''provided'' on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increases in rates or charges or the changes in service terms.

§ 1300.5 Additional publication requirement for agricultural products and fertilizer.

(a) With respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer, a rail carrier shall publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms. This requirement is in addition to the requirements imposed by §§ 1300.2, 1300.3, and 1300.4 of this part.

(b) The information published under this section must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments). Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes and the nature of those changes.

(c) A rail carrier must make the information available at its offices. Access to the information at such offices must be provided to any person, without charge, during normal business hours.

(d) A rail carrier must also make the required publications available to all persons (hereinafter referred to as subscribers) who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction. Such publications may be made available either in printed or in electronic form as agreed to by the parties. Any scheduled changes must be published in a manner that provides timely notice to subscribers. A rail carrier may impose reasonable charges for such publications. Publications may be limited to the specific information requested by the subscriber, and charges for such limited publications should be set accordingly.

[FR Doc. 96–11601 Filed 5–8–96; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 61, No. 91
Thursday, May 9, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 3, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Title: International Carriage of Perishable Foodstuffs (ATP).

Summary: This information collection is used by USDA to certify, upon request from U.S. manufacturers and their European customers, that U.S. built refrigerated trailers are properly insulated and capable of maintaining, prescribed temperatures for the carriage of frozen food and chilled products.

Need and Use of the Information: This information is needed so that USDA can properly certify refrigerated trailers in accordance with U.S. Treaty obligations.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 5.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 73.

Title: 7 CFR 719 Eminent Domain Acquisitions: Reallocating Allocations, Quotas, and Acreage Bases.

Summary: The Agricultural Adjustment Act of 1938, as amended, provides for pooling allotments for any commodity for any land from which the owner is displaced because of acquisition of the land by any Federal, State, or local agency having right of eminent domain.

Need and Use of the Information: The forms ASCS–177 and ASCS–178 are used to establish the record of the producer's pooled allotments or bases, and to request a transfer of the pooled allotments or bases to other owned land.

Description of Respondents: Farms.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,000.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–11531 Filed 5–8–96; 8:45 am]

BILLING CODE 3410–01–M

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicants for the Lubbock (TX) Region

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA is asking for comments on the applicants for designation to provide official services in the Lubbock, Texas, region currently assigned to Amarillo Grain Exchange, Inc. (Amarillo).

DATE: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by June 7, 1996.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 13, 1996, Federal Register (61 FR 10313), GIPSA announced that Amarillo had asked that their designation be amended to remove the Lubbock region consisting of the Texas counties of Andrews, Borden, Cochran, Crosby, Dawson, Dickens, El Paso, Gaines, Garza, Hockley, Howard, Kent, Lubbock, Lynn, Martin, Mitchell, Scurry, Terry, and Yoakum Counties, Texas, and the parts of Hale and Lamb Counties, Texas, assigned to Amarillo. GIPSA also asked persons interested in providing official services in the Lubbock, Texas, region to submit an application for designation. Applications were due by April 10, 1996. Farwell and Plainview, the only applicants, each applied for designation to serve mutually exclusive parts of the Lubbock area. Farwell applied for the Texas counties of Cochran, Hockley, and that part of Lamb county not already assigned to them. Plainview applied for that portion of Hale county not currently assigned to them, and the entire counties of Andrews, Borden, Crosby, Dawson, Dickens, Gaines, Garza, Howard, Kent, Lubbock, Lynn, Scurry, Martin, Mitchell, Terry, and Yoakum.

The counties that Farwell and Plainview applied for comprise all of the Lubbock region except for El Paso county. Accordingly, if Amarillo's designation is amended, there would be no official agency designated to serve El Paso county, Texas. Persons needing official services in El Paso county would have to contact the GIPSA Wichita Field Office to obtain official services.

GIPSA, in the March 13, 1996 Federal Register, also asked for comments on the need for official services in the Lubbock area. Although there were no comments, GIPSA, based on all the information available, including discussions with some grain companies in the Lubbock area, believes that there

is sufficient need for service to designate the applicants.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants and the need for official services. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants and the need for official services. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the Federal Register, and GIPSA will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 29, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–11468 Filed 5–8–96; 8:45 am]

BILLING CODE 3410–EN–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on June 7, 1996, at the Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa 50309. The purpose of the meeting is to plan for future activities and provide orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–11544 Filed 5–8–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on June 20, 1996, at the Holiday Inn, 6563 U.S. Highway 49 North, Hattiesburg, Mississippi 39401. The purpose of the meeting is to plan for future activities and provide orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–11545 Filed 5–8–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of the Census

Census Advisory Committees of the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Secretary of Commerce has determined that the renewal of the Census Advisory Committees of the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees primarily will provide an organized and continuing channel of communication to the Bureau of the Census on its efforts to reduce the differentials in the counts of these populations during the 2000 census and to identify ways the resulting census data can be disseminated with maximum usefulness to these populations and other users.

The committees will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of its members to provide advice and recommendations during the research and development phase of various topics, and provide advice and recommendations during the design, planning, and implementation phases of the 2000 census. During the research and development phase, these committees will provide advice on topics such as special methods for enumerating their populations and the race and ethnicity questions.

These committees will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act. Each committee shall consist of nine members to be appointed by and serve at the discretion of the Secretary of Commerce.

The committees shall report to the Director, Bureau of the Census. The Designated Federal Official for the Advisory Committees shall be the Associate Director for Decennial Census at the Bureau of the Census.

The Department of Commerce will file copies of the committees' renewal charters with appropriate committees in Congress.

You may address inquiries or comments to Maxine Anderson-Brown, Committee Liaison Officer, Bureau of the Census, Room 3039, FB 3, Washington, D.C. 20233, telephone (301) 457–2308,—TDD (301) 457–2540.

Dated: May 3, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 96–11530 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

Order No. 820

Expansion of Foreign-Trade Zone 26 Atlanta, Georgia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Georgia Foreign-Trade Zone, Inc.,

grantee of Foreign-Trade Zone 26, for authority to expand its general-purpose zone in the Atlanta, Georgia, area was filed by the Board on September 22, 1995 (FTZ Docket 55–95, 60 FR 51772, 10/3/95); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 26 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of April 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–11631 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–DS-P

[Order No. 819]

Expansion of Foreign-Trade Zone 12 McAllen, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the McAllen Economic Development Corporation, grantee of Foreign-Trade Zone 12, for authority to expand its general-purpose zone in the McAllen, Texas, area was filed by the Board on September 11, 1995 (FTZ Docket 52–95, 60 FR 48502, 9/19/95); and,

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 12 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of April 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration Alternate Chairman Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–11632 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 35–96]

Foreign-Trade Zone 185—Culpeper County, Virginia Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Culpeper County Chamber of Commerce, Inc., grantee of Foreign-Trade Zone 185, requesting authority to expand its zone in Culpeper County, Virginia, within the Front Royal Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 26, 1996.

FTZ 185 was approved on May 22, 1992 (Board Order 578, 57 FR 23385, 6/3/82). The zone project currently consists of a site at the Montanus Trade Center (80 acres), located on Route 29 at Route 666 in Culpeper County.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site at the Culpeper County Industrial Airpark (104 acres) located adjacent to the Culpeper County Airport, Route 29 North within the City of Elkwood, Virginia, eight miles north of the town limits of the Town of Culpeper. The Airpark is owned and operated by the County as an economic development project, with certain parcels having been sold to individual companies.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 23, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 23, 1996.).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Culpeper County Chamber of Commerce, 133 West Davis Street, Culpeper, Virginia 22701

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW Washington, DC 20230

Dated: May 2, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–11630 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 818]

Expansion of Foreign-Trade Zone 41 and Approval of Manufacturing Activity (Children's Books) Within Foreign-Trade Zone 41, Milwaukee, Wisconsin Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign-Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting authority to expand its general-purpose zone to include an additional site in Sturtevant, Wisconsin, and requesting authority on behalf of Publications International Ltd. to manufacture (assemble) children's books under zone procedures within FTZ 41, was filed by the Board on April 3, 1995 (FTZ Docket 13–95, 60 FR 18580);

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied and that the proposal would be in the public interest if the authority for the book manufacturing activity is subject to a time limit;

Now, therefore, the Board hereby orders:

The application is approved, subject to the FTZ Act and the FTZ Board's

regulations, including Section 400.28, and further subject to a 3-year time limit for the book manufacturing activity that begins on the date of activation, subject to extension upon review.

Signed at Washington, DC, this 29th day of April 1996.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–11633 Filed 5–08–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–838]

Notice of Final Determination of Sales at Less Than Fair Value: Clad Steel Plate From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski, or Erik Warga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 3099, Washington, D.C. 20230; telephone: (202) 482–3773, (202) 482–0631, or (202) 482–0922, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

FINAL DETERMINATION: As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, the Department of Commerce (the Department) has exercised its discretion to toll all deadlines for the duration of the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 16, 1995, through January 6, 1996. Thus, all deadlines in this investigation have been extended by 28 days, *i.e.*, one day for each day (or partial day) the Department was closed. As such, the deadline for this final determination is no later than May 2, 1996.

We determine that clad steel plate from Japan is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

There has been no activity regarding this case, since the February 22, 1996, preliminary determination. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Clad Steel Plate from Japan* February 22, 1996, (61 FR 7469, February 28, 1996).

Scope of the Investigation

The scope of this investigation is all clad [1] steel plate of a width of 600 millimeters (''mm'') or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials (''ASTM'') specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive. Clad steel plate within the scope of this investigation is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through August 31, 1995.

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (e.g., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition or superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electro-cladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold-rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C)(2)(e).

Facts Available

For reasons discussed in the preliminary determination, the Department, pursuant to section 776 of the Act, has used the facts available. For a discussion of the reasons for application of the facts available, and the selection of the petition margin as the facts available, see the preliminary determination.

The Department has not received any comments since the preliminary determination on its application of facts available. In accordance with section 776(c) of the Act, the Department attempted to corroborate the petition information by comparing the petition information on export price to U.S. Customs data and Japanese export statistics. Both of these sources record prices based on the HTSUS subheading 7210.90.10.00, and support the prices contained in the petition. (See memorandum dated February 16, 1996.)

Because Lukens Steel Company (the petitioner) based the normal value calculation on constructed value in the petition, we were able to examine the supporting documentation regarding the valuation of variable costs for labor, electricity, natural gas, and other factors (principally backing steel and insert metal costs) in Japan and because that supporting information was from independent, public sources, we found that those costs have probative value.

Fair Value Comparisons

As noted above, as in our preliminary determination, this final determination has been made using the margin in the petition as the facts avialable.

All-Others Rate

Under section 735(c)(5) of the Act, the ''all-others rate'' will normally be a weighted average of the weighted-average dumping margins established for all exporters and producers, but will exclude any zero or *de minimis* margins, or any margins based entirely on the facts available. However, this provision also states that if there are no margins other than those that are zero, *de minimis,* or based entirely on the facts available, the Department may use other reasonable methods to calculate the all-others rate, including a weighted-average of such margins. In this case, the only margin on the record is the facts available margin of 118.53 percent that the Department assigned to JSW. Therefore, the Department determines the all-others rate to be 118.53 percent as well.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of Clad Plate Steel from Japan that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. The suspension of liquidation instructions will remain in effect until further notice.

The dumping margins are as follows:

Exporter/Manufacturer	Margin Percentage
The Japan Steel Company	118.53
All Others	118.53

The all others rate applies to all entries of subject merchandise.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Paul L. Joffe

Acting Assistant Secretary for Import Administration.

Dated: May 2, 1996.

[FR Doc. 96–11629 Filed 5–08–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review; Welded Carbon Steel Pipes and Tubes From Thailand.

SUMMARY: In response to a request by Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe Company, petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Thailand. This review covers the following manufacturers/exporters of the subject merchandise to the United States: Saha Thai Steel Pipe Company, Ltd., SAF Steel Pipe Export Company, and Pacific Pipe Company. The period of review (POR) is March 1, 1994 through February 28, 1995.

We have preliminarily determined that respondents sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties equal to the differences between the export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1374 or (202) 482–4037, respectively.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the Federal Register an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 7, 1995, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1994 through February 28, 1995 (60 FR 12540).

In accordance with 19 CFR 353.22(a)(1) (1995), petitioners requested that we conduct a review of Saha Thai and Pacific Pipe Co. In addition, Saha Thai Steel Pipe Company, Ltd. and SAF Corporation requested an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on April 14, 1995 (60 FR 19017). On November 7, 1995, the Department published in the Federal Register its notice extending the deadline in this review (60 FR 56142).

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by Saha Thai and SAF, respondents, by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product

comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's June 21, 1995 antidumping questionnaire and additional specifications listed in our January 11, 1996 supplemental questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents and verified by the Department.

Fair Value Comparisons

To determine whether sales of pipe and tube by respondents to the United States were made at less than fair value, we compared the EP to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We used EP, in accordance with subsections 772 (a) and (c) of the Act, because the subject merchandise was sold through an affiliated export company (SAF), to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. Respondents claimed that most U.S. sales should be considered constructed export price (CEP) because they were first sold in the U.S. to affiliated distributors. However, although the Department has preliminarily determined that Saha Thai and SAT are affiliated, we disagree that Saha Thai/SAT is affiliated with the U.S. distributors. For further information on this decision, please see the memorandum from Edward C. Yang to Roland L. MacDonald dated April 29, 1996.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, and international freight. We added duty drawback to the starting price.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the combined volume of Saha Thai and SAT home market sales of the foreign like product to the combined volume of their U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

We based NV on sales to unaffiliated customers in the home market. Where appropriate, we deducted discounts, inland freight, and home market packing. We added U.S. packing in accordance with section 773(a)(6).

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV.

Price to CV Comparisons

Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific indirect selling expenses.

Cost of Production Analysis

Based on the fact that the Department had disregarded sales in the previous review because they were made below the cost of production (COP), the Department found reasonable grounds in this review, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondents made sales in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of respondents' cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We verified the respondents' reported COP values.

B. Test of Home Market Prices

We used the respondents' weighted-average COP for the POR. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and whether they were at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondents' sales of a given product were sold at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were sold at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'' in accordance with section 773(b)(2)(B) and (C) of the Act, and because we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time where an individual sale price was below the weighted-average COP of the product, as defined in section 773(b)(2)(D) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondents' cost of materials, fabrication, selling, general, and administrative expenses, U.S. packing costs, interest expenses and home market profit as reported in the sales databases. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For four models sold in the United States, we were unable to access values

for home market indirect selling expenses and profit in the data base. For these missing values, we assigned values of the average of home market selling expenses and profit reported for other home market products. Otherwise, we relied on the respondents' reported CV amounts, as verified by the Department. For selling expenses, we used the weighted-average home market direct and indirect selling expenses.

Currency Conversion

For purposes of the preliminary results, in accordance with section 773(A)(a), we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars.

Non-Shipper

Pacific Pipe stated that it did not have shipments during the POR, and we confirmed this with the United States Customs Service. Therefore, we are treating Pacific Pipe as a non-shipper for this review.

Preliminary Results of the Review

As a result of our comparison of USP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin
Saha Thai	3/1/94- 2/28/95	1.07%
Pacific Pipe Co.	3/1/94–2/28/95	(1)

(1) No sales during review period.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon the publication of the final results of these administrative reviews for all shipments of welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are published pursuant to section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: April 29, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11634 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 050296A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1001 (P606) and receipt of a notification of withdrawal of a request for a permit (P45V).

SUMMARY: Notice is hereby given that NMFS has issued a permit that authorizes a take of an Endangered Species Act-listed species for the purpose of scientific research/monitoring, subject to certain conditions set forth therein, to the Contra Costa Water District at Concord, CA (CCWD) and has received a notification of withdrawal of a request for a scientific research/enhancement permit from the U.S. Fish and Wildlife Service at Sacramento, CA (FWS).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The permit was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on February 23, 1996 (61 FR 6975) that an application had been filed by CCWD (P606) for a scientific research/monitoring permit. Permit 1001 was issued to CCWD on April 26, 1996. Permit 1001 authorizes CCWD a take of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with monitoring the Mallard Slough pumping facility for the presence of ESA-listed species in compliance with the California ESA requirements provided by the California Department of Fish and Game. The monitoring results will indicate the relative abundance of sensitive fish species and allow CCWD to modify the operation of the Mallard Slough facility as necessary to minimize potential entrainment losses. Permit 1001 expires on July 31, 2001.

Notice was published on November 27, 1995 (60 FR 58334) that an application had been filed by FWS (P45V) for a scientific research/enhancement permit. FWS applied for a scientific research/enhancement permit to continue their authorization to take adult and juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with supplementation hatchery programs and a captive broodstock program, currently authorized under permit 747. Permit 747, issued to FWS on August 8, 1991, was to expire on December 31, 1995 but was extended by two amendments (61 FR 346, January 4, 1996; 61 FR 16898, April 18, 1996) to expire on November 30, 1996. Due to continued technical concerns with hybridization and imprinting problems, NMFS was unable to complete the necessary actions required to issue a new scientific research/enhancement permit to replace permit 747.

The amendments also established a moratorium on the collection of adult ESA-listed fish for broodstock in 1996 to avoid compromising the genetic integrity of the winter-run chinook salmon population due to the hybridization problems and to avoid a significant drain on the 1996 spawning population if juveniles continue to imprint exclusively on Battle Creek, where FWS's Coleman National Fish Hatchery is located, rather than returning to the mainstem Sacramento River as intended.

NMFS has received notification that FWS would like to withdraw their request for a scientific research/enhancement permit. Prior to the expiration of permit 747, FWS will submit a new scientific research/enhancement permit application that will fully discuss the operational procedures to be implemented to correct the hybridization and imprinting problems.

Issuance of the permit, as required by the ESA, was based on a finding that the permit: (1) Was requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: May 2, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–11549 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042596B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit no. 778 (P772#59).

SUMMARY: Notice is hereby given that on [leave blank for date stamp] Permit No. 778, issued to The National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA 92038, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of Sections 216.33(d) and (3) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of Section 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR Part 222).

The permittee is authorized to increase the number of seals authorized to be retagged under the permit from 250 to 500. This modification involves no increase in the originally authorized take of 1200 monk seals.

Dated: April 29, 1996.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources.

[FR Doc. 96–11557 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042496B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification no. 2 to scientific research permit No. 840 (P531D).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit No. 840 submitted by Mr. Craig Matkin, North Gulf Oceanic Society, Merimac Drive, Mile 10.5 East Road, Homer, AK 99603, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On February 20, 1996, notice was published in the Federal Register (61 FR 6353) that a modification of permit No. 840, issued May 25, 1993 (59 FR 31370), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 840 authorizes biopsy sampling and photo-identification and behavioral studies of killer whales in Prince William Sound and adjacent waters. It has been modified to expand the research to include all Alaska waters.

Dated: April 26, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–11558 Filed 5–8–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Mercantile Exchange Rules 151—Electronic Trading Hours (ETH) Permit Program, and 575—CME/MATIF Cross-Exchange Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed amendments to Chicago Mercantile Exchange rules giving commodity trading advisors access to GLOBEX terminals.

SUMMARY: The Chicago Mercantile Exchange (''CME'') has submitted proposed rule amendments which would institute a six-month pilot program to permit commodity trading advisors (''CTAs'') to obtain GLOBEX terminals to trade for their proprietary accounts and the accounts that they manage. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the CME's proposal for public comment. The Division believes that publication of the CME's proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before May 30, 1996.

FOR FURTHER INFORMATION CONTACT: France M.T. Maca, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street NW, Washington DC 20581. Telephone: (202) 418–5482.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

By letter dated April 15, 1996, the CME submitted proposed amendments to CME Rules 151 and 575 pursuant to Section 5a(a)(12) of the Commodity Exchange Act (''Act'') and Commission Regulation 1.41(c). Revised proposed amendments were submitted by letter dated April 25, 1996.

On June 25, 1992, the CME began offering its contracts for trading through Globex. Pursuant to CME Rule 151, individuals may obtain an Electronic Trading Hours (''ETH'') permit authorizing them to trade CME contracts for their own account on a GLOBEX terminal without having to become CME members.[1] Under the proposed amendments, CTA firms also could obtain an ETH permit.[2] CTAs holding an ETH permit would be authorized to trade for both their proprietary accounts and the accounts they manage.[3] The proposed amendments make clear that a CTA firm's ETH permit could be transferred among the CTA's employees with the approval of the CME Membership Committee and board of directors, and that all employees of the permit holder who enter orders on GLOBEX terminals would be subject to applicable CME rules.

Rule 575.B currently allows CME members to obtain cross-exchange access to contracts listed on GLOBEX by MATIF, the French futures exchange. The proposed amendments would extend this privilege to all ''individuals and firms with access to GLOBEX terminals for trading CME contracts,'' thus including ETH permit holders.

II. Request for Comments

Comment is requested on any aspect of the Proposal that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the submission and related material are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st. Street NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581, by the specified date.

Issued in Washington, DC, on May 3, 1996.

Alan L. Seifert,

Deputy Director.

[FR Doc. 96–11605 Filed 5–8–96; 8:45 am]

BILLING CODE 6351–01–P

[1] While not required to become CME members, persons applying for an ETH permit must go through a process identical to the membership approval process, and, upon issuance, become subject to applicable CME rules. There are currently ten ETH permit holders.

[2] The submission dated April 15 would have required CTAs applying for ETH permits to be registered as such with the National Futures Association (''NFA''). The submission dated April 25 deletes the registration requirement ''to allow foreign CTAs who are not required to register with the NFA to obtain access to GLOBEX terminals.'' The submission states that the proposed amendments would not affect any CTA registration requirement.

[3] Individuals would continue to be limited to trading solely for their own accounts.

Advisory Committee on CFTC–State Cooperation; Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC–State Cooperation will conduct a public meeting on May 21, 1996 in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. Headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The meeting will begin at 9:00 a.m. and last until 12:00 noon. The agenda will consist of the following:

Agenda

A. Part 1

1. Opening Remarks—Acting Chairman John E. Tull, CFTC; Barbara Pedersen Holum, Commissioner, CFTC and Chairman, Advisory Committee on CFTC–State Cooperation.

2. Recently appointed CFTC Director of Enforcement, Geoffrey Aronow, will discuss recent enforcement actions and the future direction for the division.

3. Discussion regarding Telemarketing Scams and the CFTC crackdown on the publishers of commodity newsletters which, although unregistered, are providing investment advice.

4. Discussion of the possibilities for use and abuse of futures trading and the Internet.

B. Part 2

5. Discussion regarding Derivatives and Fraud: What recent high profile cases show about derivatives and what can be done about it.

6. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advise and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC–State Cooperation are more fully set forth in the Tenth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC–State Cooperation c/o Commissioner Barbara Pedersen Holum, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commission Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on May 3, 1996.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–11604 Filed 5–8–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on June 20, 1996, and from 8:30 a.m. to 4:30 p.m. on June 21, 1996. The meeting will be held at the Historic Inns of Annapolis, 58 State Circle, Annapolis, Maryland 21401. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests, Department of Defense's Student Testing Program, and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than June 3, 1996.

Dated: May 3, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–11539 Filed 5–8–96; 8:45 am]

BILLING CODE 5000–04–M

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: May 20, 1996.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: May 3, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–11540 Filed 5–8–96; 8:45 am]

BILLING CODE 5000–04–M

Departmenf of the Army

Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting.

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: June 11–12, 1996

Place: U.S. Grant Hotel, San Diego, California

Time: 8:00 a.m. to 4:30 p.m. (June 11, 1996); 8:00 a.m. to 4:00 p.m. (June 12, 1996).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel Bruce K. Howard, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6119.

SUPPLEMENTARY INFORMATION:

Theme: The Direction of Coastal Engineering in the Corps and the Resulting Impact on Research and Development (R&D).

Proposed Agenda: The session on June 11 will consist of a review of CERB business, presentations on the Marine Board Report and a review of the Report to OMB on Shore Protection, and presentations pertaining to the theme, such as the Corps' direction, coastal engineering R&D, judicial impacts, Ports of Los Angeles and Long Beach, the dredging industry, academia, and private industry.

On the morning of June 12, there will be presentations from four action groups formed from the CERB Task Force. The reports consist of the Strategic Plan, the Technical Advisory Committee, the Public Affairs (PAO) Plan, and Critical Linkages. These presentations will be followed by panel presentations concerning California activities, specifically presentations on the Coast of California Study, cooperative agreement, SANDAG, California Coastal Commission, and the Navy Project. The after session will consist of a projects overview and will also include recommendations by members of the Board.

This meeting is open to the public; participation by the public is scheduled for 2:30 p.m. on June 12.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may by submitted prior to the meeting or up to 30 days after the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–11555 Filed 5–8–96; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 3, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: NEW.

Title: Evaluation of School-to-Work Implementation—Survey of Local Partnerships and 18–Month Student Follow-up.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,896.

Burden Hours: 9,477.

Abstract: The School-to-Work (STW) Act of 1994 directs the Secretaries of Education and Labor to evaluate progress made by States and local communities in establishing systems to promote effective school-to-work transitions. Information will be collected through surveys of local STW partnerships, case studies and surveys of high school seniors. This submission seeks clearance for surveys of local STW partnerships and an 18-month follow-up student survey. Data collected will be used in reports to Congress and to others interested in school-to-work programs.

Office of Elementary and Secondary Education

Type of Review: NEW.

Title: Application for Grants Under the Innovative Programs Section of the Magnet Schools Assistance Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 150.

Burden Hours: 3,600.

Abstract: The application is used by local educational agencies to apply for funds to administer innovative programs under the Magnet Schools Program. The proposed projects must involve strategies other than magnet schools, be organized around a special emphasis, theme, or concept, and involve parent and community input.

[FR Doc. 96–11563 Filed 5–8–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–220–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 1996.

Take notice that on April 30, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets:

Twenty-Seventh Revised Sheet No. 20A
Original Sheet No. 98I

The proposed effective date of the tariff sheets is May 30, 1996.

Algonquin states that the purpose of this filing is to (i) recover upstream transition costs of $13,828.61 billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern) and (ii) to flow through a $7.46 refund of Account Nos. 191 and 186 as proposed by National Fuel Gas Supply Corporation.

Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11569 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1145–000]

Alternate Power Source Inc., Notice of Issuance of Order

May 3, 1996.

On February 23, 1996, as supplemented March 20, 1996, Alternate Power Source Inc. (APSI) submitted for filing a rate schedule under which APSI will engage in wholesale electric power and energy transactions as a marketer. APSI also requested waiver of various Commission regulations. In particular, APSI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by APSI.

On April 30, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by APSI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, APSI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of APSI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 30, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11570 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1195–000]

ANP Energy Direct Company; Notice of Issuance of Order

May 3, 1996.

On February 27, 1996, ANP Energy Direct Company (ANP) submitted for filing a rate schedule under which ANP will engage in wholesale electric power and energy transactions as a marketer. ANP also requested waiver of various Commission regulations. In particular, ANP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ANP.

On May 1, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 31, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11571 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–372–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

May 3, 1996.

Take notice that on April 30, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP96–372–000 a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add and operate a new delivery point under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct and operate a new delivery point that will serve as a interconnection between ANR and Continental Natural Gas Inc. (CNG) for the delivery of natural gas to CNG in Harper County, Oklahoma. The facility will consist of a tap, approximately 100 feet of 12-inch pipeline, and an electronic measurement system. The cost of the proposed facility will be approximately $167,000 and will have a maximum capacity of 30,000 Mcf per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11572 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–59–000]

Arkansas Western Pipeline Company; Notice of Compliance Filing

May 3, 1996.

Take notice that on April 29, 1996, Arkansas Western Pipeline Company (AW Pipeline), pursuant to 18 CFR 154.111, tendered a new tariff sheet containing an index of firm customers (Original Sheet No. 89) and First Revised Sheet No. 1 (Table of Contents).

AW Pipeline states that a copy of this filing is served upon the Arkansas Public Service Commission and the Missouri Public Service Commission upon all intervenors in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11573 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–218–004]

Burney Forest Products, a Joint Venture; Notice of Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

May 3, 1996.

On April 30, 1996, Burney Forest Products, a Joint Venture (Burney Forest) of 35586–B, Highway 299 East, Burney, California 96013, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the biomass-fueled small power production facility is located in Shasta County, California. The Commission previously certified the capacity of the facility to be 24.0 MW. The facility consists of two wood-fired boilers and a condensing steam turbine generator. According to the applicant, the instant application for recertification was submitted solely to report a change in ownership of the facility. Applicant has also concurrently filed with the Commission in Docket No. EL96–51–000, a petition for a declaratory order requesting a determination of the appropriate methodology for calculating the maximum net capacity of the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11567 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–215–000]

Florida Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

April 30, 1996.

Take notice that on April 25, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets to become effective June 1, 1996.

Original Sheet No. 129C
Original Sheet No. 129D
Second Revised Sheet No. 184B

FGT states that its currently effective FERC Gas Tariff does not contain provisions for resolution of Unscheduled Deliveries from FGT's system. The Unscheduled Delivery provisions as proposed herein are very similar to the Unauthorized Gas provisions as contained in Section 12.D of FGT's General Terms & Conditions (GT&C). However, whereas the Unauthorized Gas provisions apply exclusively to points of receipt, the proposed Unscheduled Delivery provisions apply exclusively to points of delivery in FGT's Western Division. Unscheduled Delivery provisions are not necessary in FGT's Market Area because all Market Area delivery points are covered by Delivery Point Operator Accounts. Furthermore, pipeline interconnects are excluded because most are covered by operational balancing agreements or other arrangements with the interconnecting pipelines which are not subject to FGT's Tariff.

Unscheduled Deliveries are defined in the proposed tariff provisions are volumes delivered at non-pipeline interconnect points for which there is no volume scheduled by any shipper. Additionally, as required by Commission orders concerning FGT's Unauthorized Gas Provisions, the proposed Unscheduled Delivery provisions shall not apply at any point at which there is a volume scheduled and shall not encompass imbalance volumes. Further, the proposed provisions provided that parties responsible for Unscheduled Deliveries which occurred prior to the proposed effective date of these provisions, will be provided the opportunity to balance by scheduling deliveries to FGT prior to being settled on a cash basis.

Similar to the Unauthorized Gas provisions, FGT is proposing that upon becoming aware of Unscheduled Deliveries, FGT will post on its Electronic Bulletin Board (EBB) for a period of thirty (30) days the volume, production month delivered and the point of delivery of such volumes. Shippers who respond during the thirty (30) day period will have thirty (30) days to schedule such volumes. Unscheduled Deliveries prior to the effectiveness of these provisions will be afforded a sixty (60) days posting period and shippers will have thirty (30) days to schedule such volumes. Unscheduled Deliveries neither claimed nor scheduled will be billed to the party physically the Unscheduled Deliveries at a rate of 120% of the St. Helena Parish Index plus a transportation rate described below.

FGT shall invoice a maximum of 12,000 MMBtu at the 120% Index rate during a twelve (12) month calender period at any single delivery point. Volumes in excess of the maximum will be billed at a rate of 150% of the St. Helena Index. FGT has included the maximum provision to discourage potential ''gaming'' of Unscheduled Deliveries. Unscheduled Deliveries settled on a cash basis will be billed a transportation rate including surcharges based on a point of receipt at FGT milepost zero under Rate Schedule FTS–1 for service in FGT's Western Division. The non-transportation revenues resulting from the resolution of Unscheduled Deliveries will be accounted for pursuant to Section 19.1 of FGT's GT&C.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First street, NE, Washington, DC, 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11574 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–347–000]

Granite State Gas Transmission, Inc.; Notice of Application

April 30, 1996.

Take notice that on April 23, 1996, Granite State Gas Transmission, Inc. (Granite State), filed in Docket No. CP96–347–000, an application pursuant to Section 7(b) of the Natural Gas Act requesting authorization for the abandonment of: (1) approximately 15.26 miles of 6-inch pipeline located between Exeter, New Hampshire and Haverhill, Massachusetts; and (2) a compressor station located in Plaistow, New Hampshire, comprised of two 375 HP Ingersoll-Rand reciprocating engines, valves, station piping and appurtenant equipment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

According to Granite State, the proposed interstate pipeline that the Portland Natural Gas Transmission System (PNGTS) plans to construct and operate in its pending application before the Commission, Docket No. CP96–249–000, involves a routing south from Portland to Haverhill which closely parallels Granite State's existing pipeline. From Exeter south to Haverhill, the routing of the PNGTS is alongside Granite State's existing pipeline. Granite State says that it owns and operates parallel 6- and 10-inch pipelines for a distance of approximately 15.26 miles. Granite State requests authority to abandon its 6-inch pipeline in order to make way for and provide space for the location of the new PNGTS 20-inch line, which will allow the PNGTS pipeline to be laid in the existing right-of-way, alongside Granite State's 10-inch pipeline.

According to Granite State, the abandoned 6-inch line will be removed from its existing location and disposed off by PNGTS at no cost to Granite State. At the time the 6-inch is removed, PNGTS will reimburse Granite State for the undepreciated cost, which as of December 31, 1995 was $44,099.00. Granite State says it will convey to PNGTS the right to use the right-of-way occupied by the 6-inch line at a price to be negotiated later. The actual abandonment and removal of the 6-inch line and the compressor station will not occur until the construction of the PNGTS 20-inch pipeline begins in the Exeter to Haverhill area, sometime during the 1998 construction season. Granite State further requests that a Commission order approving the requested abandonment be issued contemporaneously with a Commission ordered issuing a certificate to PNGTS in Docket No. CP96–249–000. According to Granite State, there will be no loss of service or decrease in service to any of its customers as a result of the proposed abandonments.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Granite State to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–11575 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–217–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

April 30, 1996.

Take notice that on April 26, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective June 1, 1996:

Second Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 16
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
Original Sheet No. 34A
First Revised Sheet No. 35
First Revised Sheet No. 40
Original Sheet No. 40A
Original Sheet No. 40B
First Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 45
First Revised Sheet No. 50B
First Revised Sheet No. 50C
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 56
First Revised Sheet No. 57
Original Sheet No. 57A
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 63
Second Revised Sheet No. 64
Second Revised Sheet No. 65
Second Revised Sheet No. 67
First Revised Sheet No. 68
First Revised Sheet No. 70
Original Sheets No. 84 through 89

Great Lakes also tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet to become effective June 1, 1996:

Forty-Second Revised Sheet No. 1

Great Lakes states that the above-referenced tariff sheets are being filed to implement procedural and operational changes deemed necessary in the competitive post-Order No. 636 environment. Great Lakes further states that all of the proposed changes are being made in an effort to provide shippers with greater ease and flexibility in obtaining service, while preserving the operational integrity of Great Lakes' system. None of the proposed changes will affect any of Great Lakes' currently effective rates and charges, it is stated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–11576 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1139–000]

KinEr-G Power Marketing Inc.; Notice of Issuance of Order

May 3, 1996.

On February 22, 1996, as amended March 29, 1996, KinEr-G Power Marketing Inc. (KPMI) submitted for filing a rate schedule under which KPMI will engage in wholesale electric power and energy transactions as a marketer. KPMI also requested waiver of various Commission regulations. In particular, KPMI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by KPMI.

On April 30, 1996, pursaunt to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KPMI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, KPMI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KPMI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 30, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11577 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–125–001]

Midwestern Gas Transmission Company; Notice of Cashout Report

May 3, 1996.

Take notice that on April 29, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing its cashout report for the September 1993 through August 1994 period.

Midwestern states that the cashout report reflects a total cashout loss during this period of $89,438.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11578 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 3, 1996.

Take notice that on April 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 5A, with a proposed effective date of May 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering (IG) rate and charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above the then-effective IG rate. The recalculation produced an IG rate of 23 cents per dth—more than 2 cents above the effective IG rate of 16 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11579 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–216–000]

New England Power Company, et al.; Notice of Complaint

May 3, 1996.

Take notice that on April 25, 1996, New England Power Company (New England) filed a complaint against Algonquin Gas Transmission Company (Algonquin). New England states that Algonquin currently designs its rates for New England under Rate Schedule X–38 on an incremental basis.

New England states that the incremental pricing is wrong for X–38. The facilities underlying Rate Schedule X–38 are an integrated part of Algonquin's system and provide significant, demonstrable benefits to all customers on the system. The only just

and reasonable rate design for X–38 is roll-in Algonquin's other transportation services.

New England states that the proper rate design does not differ whether the X–38 facilities are evaluated under the Battle Creek test—the test in effect when New England made substantial financial commitments in contracting for X–38 service—or under the Commission's recent Pricing Policy Statement.

New England requests that the Commission direct Algonquin to restate its X–38 rates on a rolled-in basis. New England asserts that if the Commission does not summarily require Algonquin to roll-in X–38, it should set this matter for an expedited hearing. New England states that at present, New England pays unreasonable rates while other customers free-ride on the system-wide benefits provided by X–38. Because New England is raising this roll-in issue under Section 5 of the Natural Gas Act, relief may be prospective only.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before May 31, 1996. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before May 31, 1996.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11580 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–359–000]

NorAm Gas Transmission Co.; Notice of Application

May 3, 1996.

Take notice that on April 29, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–359–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation agreement with Reynolds Metals Company (Reynolds), which was authorized in Docket No. G–18190,[1] as well as certain inactive facilities located in Saline County, Arkansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

NGT proposes to abandon a transportation agreement with Reynolds, dated March 12, 1959, on file as NGT's Rate Schedule XT–17. The transportation agreement for Rate Schedule XT–17 provides that NGT transports natural gas to four plants owned by Reynolds located in Arkansas, the Rolling Mills-North, Gum Springs, Jones Mills and Hurricane Creek plants. NGT states that transportation under Rate Schedule XT–17 has been replaced by a Part 284 transportation agreement pursuant to NGT's tariff and that the replaced agreement has been terminated pursuant to a mutual written agreement of the parties. NGT states that the Reynolds Hurricane Creek plant has been shut down and NGT no longer provides service to this plant. NGT proposes to abandon the inactive facilities previously used to deliver gas to the Hurricane Creek plant. These inactive facilities consists of one 4-inch tap, two 6-inch turbine meters, two meter tubes and two 2-inch regulators. All other existing facilities used to deliver gas to Reynolds' active plants will remain in service.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11581 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 22 FPC 158 (1959).

[Docket No. MT96–13–000]

NorAm Gas Transmission Co.; Notice of Proposed Change in FERC Gas Tariff

May 3, 1996.

Take notice that on April 30, 1996, NorAM Gas Transmission Company (NorAM) tendered for filing the following tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1:

Second Revised Sheet No. 239
Original Sheet No. 239A.

NorAM states that this filing is being made pursuant to Order Nos. 566, *et seq.*, and Section 250.16(b) of the Commission's Regulations (18 CFR 250.16(b)) to update the subject tariff sheets.

NorAM states that a copy of this filing has been served upon NorAm's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11582 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–016]

NorAm Gas Transmission Co.; Notice of Refund Report

April 30, 1996.

Take notice that on April 25, 1996, NorAm Gas Transmission Company (NGT) tendered for filing a Refund Report related to the refunds issued pursuant to Article VIII of its Rate Case Settlement in Docket No. RP94–343.

NGT states that the refunds were made in the form of credits to customers' bills during the month of March 1996, and that the detail computations were included with each customer's bill. NGT further states that the report reflects the amounts of refunds, including interest computed in accordance with the Commission's regulations, made to each customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR, 385.211). All such protests should be filed on or before May 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11583 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1207–000]

Southern California Edison Co.; Notice of Filing

May 1, 1996.

Take notice that on March 29, 1996, Southern California Water Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before May 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11584 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–219–000]

Southern Natural Gas Co., Notice of GSR Revised Tariff Sheets

May 3, 1996.

Take notice that on April 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of May 1, 1996:

Tariff Sheets Applicable to Contesting Parties:

Ninth Revised Sheet No. 14
Thirty-First Revised Sheet No. 15
Ninth Revised Sheet No. 16
Thirty-First Revised Sheet No. 17
Twentieth Revised Sheet No. 29
Twentieth Revised Sheet No. 30
Twentieth Revised Sheet No. 31

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a slight increase of $.004 in its FT/FT–NN GSR Surcharge, resulting from the addition of a credit for interim FT services and a decrease in GSR billing units effective May 1, 1996.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11585 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–184–014]

Texas Eastern Transmission Corp.; Notice of Petition To Amend

April 30, 1996.

Take notice that on April 24, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–184–014, a petition to amend the existing authorizations issued July 16, 1993, and June 6, 1995, in Docket Nos. CP92–184–000 *et al.* pursuant to Section 7(c) of the Natural Gas Act, to provide for relocation and installation of certain facilities which are necessary in conjunction with the eastern Pennsylvania portion of Texas Eastern's Integrated Transportation Project (ITP) replacement and expansion, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued July 16, 1993, as amended by order issued June 6, 1995, Texas Eastern was authorized to construct and operate various pipeline, pipeline looping, pipeline replacement and compression facilities in order to implement a new firm incremental transportation service for various customers. The project, known as the ITP project, involved construction of facilities to provide 201,000 Dekatherms per day (Dthd) of incremental capacity on the Texas Eastern system. ITP is a four-year project which includes construction of 89 miles of pipeline in 23 discrete segments in four states, the addition of over 48,000 horsepower of compression and other modifications at ten existing compressor stations, and the addition of certain new metering and regulating stations and other related facilities.

One segment of the authorized ITP project is the installation in 1996 of 1.7 miles of 36-inch pipeline to replace existing 20-inch pipeline between Eagle, Pennsylvania and Lambertsville, New Jersey in Bucks County, Pennsylvania (Eagle Replacement). The eastern terminus of the replacement facilities would be at approximately Milepost 1419.98 on Texas Eastern's system. Texas Eastern asserts that the Eagle Replacement requires installation of certain above-ground appurtenant facilities at the eastern end of the

replacement. Texas Eastern explains that the subject filing was made in compliance with an April 8, 1996, letter from the Director of the Office of Pipeline Regulation finding that the appurtenant above-ground Eagle Replacement facilities contemplated by Texas Eastern require additional certificate authorization. These appurtenant facilities are the subject of this petition to amend. However, Texas Eastern states that it reserves its right to apply to the Commission for rehearing and to petition for judicial review of the Commission's decision. In addition Texas Eastern states that its requested authorizations are without prejudice to Texas Eastern's right to seek clarification or rehearing of the April 8, 1996, letter or any subsequent Commission action in this proceeding.

Texas Eastern requests authority to relocate and install pressure regulating, valving, and 20-inch launcher facilities at the east end of its authorized ITP Eagle facilities at approximately Milepost 1419.98. It is stated that these facilities are currently located at the end of the 1995 Eagle replacement facilities at Milepost 1418.27. Texas Eastern asserts that industry operating requirements and standard practices associated with pipeline operations and maintenance considerations mandate the construction of these appurtenances, which includes valves, pressure regulation devices, and launchers and receivers used for maintenance and inspection activities, consistent with the United States Department of Transportation (DOT) regulations.

Texas Eastern also proposes to install a 36-inch receiver facility at the end point of the 1966 Eagle Replacement in addition to the relocated 20-inch launcher. It is stated that the 36-inch receiver facility would be permanent because Texas Eastern currently has no facility expansion on file with the Commission which would require expansion of the Eagle 36-inch replacement facilities. Texas Eastern asserts that these launcher and receiving facilities are necessary to accommodate the passage of instrumented internal inspection devices and cleaning devices, i.e., pigs, necessary to operate and maintain the pipeline. Texas Eastern further asserts that the launchers and receivers proposed are also consistent with DOT regulations. Texas Eastern notes that portions of the launcher and receiver barrels would be above ground level and the remainder would be below ground. Texas Eastern also proposes to install any necessary related appurtenant facilities, such as fences and markers, which are reasonably required for access, installation, operation, and maintenance, as well as efficient and economical operation of the transmission facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 21, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the amended petition is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11586 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–60–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 1996.

Take notice that on April 30, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective May 30, 1996:

First Revised Sheet No. 13
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 20

Texas Eastern states that the purpose of the filing is to update the system maps to reflect its current principal pipeline facilities and the points at which service is rendered, as required by Section 154.106 of the Commission's Regulations.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11587 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–218–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 1996.

Take notice that on April 29, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A, with a proposed effective date of May 29, 1996.

Texas Eastern states that the purpose of this filing is to provide Texas Eastern's firm customers under Rates Schedules CDS, FT–1, LLFT and SCT with a customized reservation rate that will allow them maximum flexibility in dealing with differing market conditions throughout the contract year. The

Customized Reservation Pattern ™ (''CRP'') election will allow a firm customer to shift non-tracked reservation charges from the April to October period into the preceding November to March period. By customizing reservation charges during the contract year, this rate methodology will lift ceiling prices for capacity release and further the goal enunciated by the Commission in Order No. 635 and its Rate Design Policy Statement of allocating capacity to those shippers who value it the most.

Texas Eastern states that copies of the filing were served on the firm customers of Texas Eastern and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A—Sixth Revised Volume No. 1

Proposed To Be Effective May 29, 1996

Sheet Nos.78–97
Sheet Nos. 98–125
First Revised Sheet No. 202
Original Sheet No. 202A
First Revised Sheet No. 204
Original Sheet No. 204A
Sixth Revised Sheet No. 211
Original Sheet No. 211A
First Revised Sheet No. 214
Original Sheet No. 214A
First Revised Sheet No. 224
First Revised Sheet No. 225
First Revised Sheet No. 227
First Revised Sheet No. 229
Original Sheet No. 229A
First Revised Sheet No. 250
First Revised Sheet No. 252
Original Sheet No. 252A
Sixth Revised Sheet No. 463
Original Sheet No. 711
Sheet Nos. 712–715
Original Sheet No. 726
Sheet Nos. 727–730
Original Sheet No. 741
Sheet Nos. 742–745
Original Sheet No. 766C.1

[FR Doc. 96–11588 Filed 5–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–371–000]

Transwestern Pipeline Co.; Notice of Application for Abandonment

May 3, 1996.

Take notice that on April 30, 1996, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing the abandonment and removal of Transwestern's Santa Fe Bilbrey Compressor Unit and Transwestern's Texaco Bilbrey Compressor Unit, both of which are located on Transwestern's Monument Lateral in Lea County, New Mexico. The application is on file with the Commission and open to public inspection.

Transwestern states the following:

Its Santa Fe Bilbrey Compressor Unit is a 1,000 horsepower rental field compressor unit which was installed in 1994 pursuant to Section 157.208 of the Commission's regulations. Its Texaco Bilbrey Compressor Unit is a 750 horsepower rental unit which was installed in 1994. The production from behind the Santa Fe Bilbrey Compressor Unit and Texaco Bilbrey Compressor Unit never achieved the projected level, when combined, only average approximately 5 MMcf/day. The existing facilities are thus oversized for this minimal volume. It is therefore uneconomic for Transwestern to continue paying the approximately $30,000 per month rental payment and Transwestern has notified Santa Fe and Texaco that it is requesting Commission authority to abandon the compressors. Santa Fe and Texaco have agreed to provide their own compression to the extent and in the event they desire to continue transporting production from their Bilbrey wells on Transwestern's Monument Lateral. The requested abandonment is thus in the public convenience and necessity as it will save Transwestern money, not impact services provided by Transwestern, and if Santa Fe and Texaco install their own compression, enable production from the Bilbrey wells to continue to be transported on Transwestern's Monument Lateral.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11589 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–281–000]

West Texas Gas, Inc.; Notice of Petition for Declaratory Order of Gathering Status

April 30, 1996.

Take notice that on March 25, 1996, West Texas Gas, Inc. (WTG) petitioned the Commission, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, to issue an order declaring that certain pipeline facilities, for which Northern Natural Gas Company (Northern) has sought approval to abandon, by sale to WTG, in Docket No. CP96–215–000, are gathering facilities, exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in this request which is on file with the Commission and open to public inspection.

WTG and Northern have entered into a Conveyance, Assignment and Bill of Sale, dated December 29, 1995, under

which Northern is to transfer to WTG certain facilities, with appurtenances, located in Irion and Reagan Counties, Texas, and certain small volume measuring stations, with appurtenances, located in various counties in Texas. The facilities to be transferred include pipeline, valves, and measuring and regulating equipment and contain no compressors. WTG plans, after consummating the acquisition, to use the subject facilities to deliver gas from its Big Lake Processing Plant in Reagan County to the Rocker B–2 Plant for further processing.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 21, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WTG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11590 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. ER90–168–027, et al.]

National Gas & Electric L.P., et al.; Electric Rate and Corporate Regulation Filings

May 1, 1996.

Take notice that the following filings have been made with the Commission:

1. National Gas & Electric L.P., J. Aron & Company, Petroleum Source & Systems Group, Inc., K Power Company, Power Clearinghouse Inc., Amoco Power Marketing Corporation, J.D. Loock & Associates

[Docket Nos. ER90–168–027, ER95–34–007, ER95–266–005, ER95–792–003, ER95–914–004, ER95–1359–003, and ER95–1826–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 23, 1996, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On April 23, 1996, J. Aron & Company filed certain information as required by the Commission's March 1, 1995, order in Docket No. ER95–34–000.

On April 15, 1996, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

On April 15, 1996, K Power Company filed certain information as required by the Commission's June 19, 1995, order in Docket No. ER95–792–000.

On April 16, 1996, Power Clearinghouse Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On April 16, 1996, Amoco Power Marketing Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–1359–000.

On April 18, 1996, J.D. Loock & Associates filed certain information as required by the Commission's October 27, 1995, order in Docket No. ER95–1826–000.

2. PECO Energy Company

[Docket No. ER95–805–000]

Take notice that on April 16, 1996, PECO Energy Company tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: May 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power Company

[Docket No. ER96–1281–000]

Take notice that on April 25, 1996, Mississippi Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER96–1649–000]

Take notice that on April 26, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by LG&E Marketing Inc. (LG&E). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit LG&E to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make LG&E a Participant in the Pool. NEPOOL requests an effective date of June 1, 1996 for commencement of participation in the Pool by LG&E.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER96–1650–000]

Take notice that on April 26, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Louis Dreyfus Electric Power, Inc. (Louis Dreyfus). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Louis Dreyfus to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Louis Dreyfus a Participant in the Pool. NEPOOL requests an effective date of June 1, 1996 for commencement of participation in the Pool by Louis Dreyfus.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER96–1651–000]

Take notice that on April 26, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by KCS Power Marketing, Inc. (KCS). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit KCS to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make KCS a Participant in the Pool. NEPOOL requests an effective date of June 1, 1996 for commencement of participation in the Pool by KCS.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–1652–000]

Take notice that on April 26, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and the Long Island Lighting Company.

Cinergy and the Long Island Lighting Company are requesting an effective date of April 29, 1996.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–1653–000]

Take notice that on April 26, 1996, Wisconsin Public Service Corporation, tendered for filing an executed agreement with Marquette Board of Light & Power, under its CS–1 Coordination Sales Tariff.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–1654–000]

Take notice that on April 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Purchase and Sales Agreement between LG&E and Delhi Energy Services under Rate Schedule GSS - Generation Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER96–1655–000]

Take notice that on April 26, 1996, Southwestern Public Service Company submitted an executed service agreement under its point-to-point transmission tariff with Central and South West Services, Inc.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Utilities Company

[Docket No. ER96–1656–000]

Take notice that on April 26, 1996, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and Entergy Services, Inc. and KU and Southern Company Services, Inc. under its TS Tariff. KU requests effective dates of April 23, 1996, and April 3, 1996, respectively.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas and Electric

[Docket No. ER96–1657–000 Corporation]

Take notice that on April 26, 1996, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Global Petroleum Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: May 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11568 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–98–001, et al.]

Nevada Power Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 1996.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER96–98–001]

Take notice that on April 15, 1996, Nevada Power Company tendered for filing a supplemental compliance filing in the above-referenced docket.

Comment date: May 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. North American Energy Conservation, Eastern Power Distribution, Inc., Western Power Services, Inc., IGI Resources, Inc., Sonat Power Marketing, Inc., Industrial Energy Applications, Inc.,

[Docket Nos. ER94–152–009, ER94–964–009, ER95–748–004, ER95–1034–003, ER95–1050–003, ER95–1465–002, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 29, 1996, North American Energy Conservation filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94–152–000.

On April 29, 1996, Eastern Power Distribution, Inc. filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000.

On April 29, 1996, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On April 26, 1996, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On April 29, 1996, Sonat Power Marketing filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1050–000.

On April 22, 1996, Industrial Energy Applications, Inc. filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER95–1465–000.

3. NorAm Energy Services, Inc., Coastal Electric Services Co., The Power Company of America, L.P., CL Power Sales One, L.L.C., Jpower Inc., Mid American Natural Resources, Inc., Enerserve, L.C.

[Docket Nos. ER94–1247–008, ER94–1450–010, ER95–111–006, ER95–892–004, ER95–1421–003, ER95–1423–001, ER96–182–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 29, 1996, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On April 29, 1996, Coastal Electric Services Company filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On April 29, 1996, The Power Company of America, L.P. filed certain information as required by the Commission's December 30, 1994, order in Docket No. ER95–111–000.

On April 25, 1996, CL Power Sales One, L.L.C. filed certain information as required by the Commission's June 8, 1995, order in Docket No. ER95–892–000.

On April 23, 1996, Jpower Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1421–000.

On January 25, 1996, Mid American Natural Resources, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1423–000.

On April 29, 1996, Enerserve, L.C. filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–182–000.

4. Valero Power Services Co., Illinova Power Marketing, Inc., Delhi Energy Services, Inc., IGI Resources, Inc., Hinson Power Company, Energy Online, Inc., Bonneville Fuels Management Corp.

[Docket Nos. ER94–1394–007, ER94–1475–004, ER95–940–004, ER95–1034–003, ER95–1314–004, ER96–138–001, ER96–659–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 24, 1996, Valero Power Services Co. filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On April 29, 1996, Illinova Power Marketing, Inc. filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000.

On April 29, 1996, Delhi Energy Services, Inc. filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

On April 26, 1996, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On April 29, 1996, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

On April 26, 1996, Energy Online, Inc. filed certain information as required by the Commission's January 5, 1996, order in Docket No. ER95–138–000.

On April 26, 1996, Bonneville Fuels Management Corp. filed certain information as required by the Commission's February 8, 1996, order in Docket No. ER96–659–000.

5. PECO Energy Company

[Docket No. ER96–640–001]

Take notice that on April 11, 1996, PECO Energy Company tendered for filing market based sales tariffs and supporting Code of Conduct.

Comment date: May 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Power, Inc.

[Docket No. ER96–1092–000]

Take notice that on April 24, 1996, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company)

[Docket No. ER96–1328–000]

Take notice that on April 22, 1996, South Carolina Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cook Inlet Energy Supply

[Docket No. ER96–1410–000]

Take notice that on April 29, 1996, Cook Inlet Energy Supply filed an amendment to their filing in Docket No. ER96–1410–000.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company)

[Docket No. ER96–1643–000]

Take notice that on April 25, 1996, San Diego Gas & Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 77 between SDG&E and the United States Department of Energy, acting and through the Bonneville Power Administration.

Comment date: May 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Rainbow Energy Marketing Corp.

[Docket No. ER96–1645–000]

Take notice that on April 25, 1996, Rainbow Energy Marketing Corp. tendered for filing a letter on behalf of the Western Systems Power Pool (WSPP) approving its application for membership in WSPP.

Comment date: May 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11615 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10228–007 Kentucky]

Cannelton Hydroelectric Project LP; Notice of Availability of Draft Environmental Assessment

April 30, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the Cannelton Hydroelectric Project. The licensee proposes to eliminate the powerhouse by adding 240 small generating units that would be located upstream of the tainter gates within the dam's tainter gate bays and to change the approved transmission line. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Cannelton Hydroelectric Project is located on the Ohio River in Hancock County, Kentucky.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street NE., Washington, D.C. 20426.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix Project No. 10228–007 to all comments. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11591 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1927–008]

PacifiCorp; Notice of Intent To Prepare an Environmental Impact Statement (EIS), Conduct Public Scoping Meetings and a Site Visit

April 30, 1996.

The Federal Energy Regulatory Commission (FERC) is reviewing an application to relicense and continue operating the North Umpqua Hydroelectric Project, FERC Project No. 1927–008. The project is on the North Umpqua River in Douglas County, Oregon. This project would primarily involve federal lands managed by the Umpqua National Forest, but also involves some lands managed by the Bureau of Land Management (BLM).

Relicensing this project could constitute a major federal action significantly affecting the quality of the human environment. Therefore, the FERC intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act of 1969, and the Commission's regulations. The EIS will objectively consider both site-specific and cumulative environmental impacts of the project and responsible alternatives, and will include an economic, financial, and engineering analysis. The Umpqua National Forest will be a cooperating agency on the EIS.

A Draft EIS (DEIS) will be circulated for review and comment by all interested parties, and FERC will hold a public meeting on the DEIS. FERC staff will consider and respond to comments received on the DEIS in the Final EIS. The FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision. The Umpqua National Forest will use the information in the EIS to make its decision on issuing mandatory section 4(e) conditions for the project under the Federal Power Act and their section 7(a) determination under the Wild and Scenic Rivers Act.

Scoping: Concerned citizens, special interest groups, local governments, state and federal agencies, and any other interested parties are invited to comment on the scope of the environmental issues that should be analyzed in the EIS. Scoping will help ensure that all significant issues related to this proposal are addressed in the EIS.

The FERC will conduct two scoping meetings on June 6, 1996. A scoping meeting oriented towards the agencies will begin at 9:00 am on June 6th at the Umpqua National Forest office located at 2900 NW Stewart Parkway, Roseburg, Oregon. Those wishing to attend this meeting should contact Jim Wieman, District Ranger at (503) 942–5591 by May 31st.

A scoping meeting oriented towards the public will begin at 7:00 pm on June 6th at the Douglas County Fairground Complex Community Building located at 2110 S.W. Frear Street, Roseburg, Oregon. (The public and the agencies may attend either or both meetings, however.)

Objectives: At the scoping meetings, FERC staff will (1) identify preliminary environmental issues related to the proposed project; (2) attempt to identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of views in opposition to, or in support of, the staff's preliminary views.

Procedures: The meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the official record of the Commission proceedings for the North Umpqua Project relicense. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

To help focus discussions at the scoping meeting, the FERC will mail a Scoping Document, outlining subject areas to be addressed in the EIS, to agencies and interested individuals on the project mailing list. Copies of the scoping document will also be available at the scoping meetings.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Office of the Secretary, Dockets Room 1A, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 until July 12, 1996. All written correspondence should clearly show the following caption on the first page: North Umpqua Hydroelectric Project, FERC No. 1927–008.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedures, requiring parties filing documents with the Commission, to serve a copy of the document on each

person whose name appears on the official service list. Further, if a party or intercedar files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit: A project tour is planned for June 4th and 5th. Those who wish to attend contact David Schwall of PacifiCorp at (503) 464–5345 by May 31st to sign up and receive further information and directions. Attendees will meet at the North Umpqua Forest Office located at 2900 Stewart Parkway at 8:00 am.

For Further Information Contact: Vince Yearick, FERC–OHL (202) 219–3073.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11592 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10813–011]

City of Summerville; Notice of Availability of Draft Environmental Assessment

April 30, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the Summerville Hydroelectric Project. The application is to (1) substitute two turbine/generator units for the four units in the license; (2) revise the project boundary to include 9.6 miles of new transmission line in place of the licensed 8-mile transmission line; and (3) delete license article 303. The proposed amendment would not affect project capacity. The licensee requested the amendment because the original proposal was not economically feasible. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Summerville Hydroelectric Project is located on the Gauley River in Nicholas County, West Virginia.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, 888 First Street NE., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix Project No. 10813–011 to all comments. For further information, please contact the project manager, Heather Campbell, at (202) 219–3097.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–11593 Filed 5–8–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5502–3]

Responsiveness Summary to Comments on Proposed De Minimis Settlements, Peerless Industrial Paint Coatings Site, St. Louis, MO

AGENCY: Environmental Protection Agency.

ACTION: Publication of the summary of comments on proposed *de minimis* settlements, Peerless Industrial Paint Coatings Site, St. Louis, Missouri.

SUMMARY: The United States Environmental Protection Agency (EPA) has proposed *de minimis* settlements with four potentially responsible parties (PRPs) at the Peerless Industrial Paint Coatings Site in St. Louis, Missouri. These settlements have been proposed pursuant to Section 122(g)(1)(B) of the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(g)(1)(B) (CERCLA). The comment period for the proposed *de minimis* settlements was open from December 13, 1995 to January 12, 1996. EPA received one comment during the comment period from Boise Cascade Corporation. In addition, EPA received a telephone call and a letter from Boise Cascade Corporation on or about November 16 and November 20, 1995. In its comment letter of January 8, 1996, Boise Cascade Corporation first questions EPA's decision not to inform it and other potentially responsible parties (PRPs) of the negotiation of the *de minimis* settlements until after the settlements were reached. Secondly, it questions the identity of other parties EPA considered to be eligible for a *de minimis* settlements and why any other settlements with *de minimis* parties were not negotiated. Thirdly, it objects to the *de minimis* settlements because it does not know the basis that EPA used for determining which PRPs were eligible for the *de minimis* settlements, the method for accounting for the orphan share, nor the premiums paid by the *de minimis* parties.

EPA's Response to Boise Cascade Corporation's Comments: No New information Was Provided

To address Boise Cascade Corporation's first comment, Section 122(i)(1) of CERCLA provides that a public comment period shall be provided in the Federal Register for any settlements reached pursuant to Section 122(g) of CERCLA. There is no statutory requirement that PRPs be notified in advance of the published notice in the Federal Register nor be a participant in EPA's negotiations of *de minimis* settlements, to which they are not a party. After negotiations with the *de minimis* parties are concluded, the public comment period provided by Section 122(i)(1) of CERCLA is the process for EPA to receive comments.

To address the second and third comments, Section 122(g)(1)(A) of CERCLA allows *de minimis* settlements to be offered if the settlements involve a minor portion of the response costs at the Site and the amount and toxicity of the hazardous substances contributed to the Site by the party are minimal. EPA made a settlement offer to those *de minimis* parties that generated 1.665% or less of the hazardous substances that were removed from the Site. The calculation was based upon documentation developed during the removal action which attributed waste by each contributor. The toxicity of all the hazardous substances found at the Site was relatively the same; the hazardous substances at the Site demonstrated the characteristic of ignitability. The information described herein that Boise Cascade Corporation seeks regarding the identity of *de minimis* parties, information determining the eligibility of *de minimis* parties, and premiums paid is public information; Boise Cascade Corporation could have requested such information prior to making its comment.

To address the remaining issues raised in the third comment, EPA has not determined that an orphan share exists. EPA would account for the orphan share during the allocation pilot process that this Site is scheduled to undergo as part of EPA's administrative reforms. The *de minimis* settlements agreements reveal the premiums paid; a premium was calculated on the basis of anticipated future costs and the *de*

minimis parties' contribution of hazardous substances that were removed from the Site. Due to exceptional circumstances, liability of parties and future costs were readily and fairly identifiable.

Boise Cascade Corporation has offered no new information in its comments to cause EPA to alter its decision to enter into the proposed *de minimis* settlements.

Dated: April 29, 1996.

William Rice,

Regional Administrator.

[FR Doc. 96–11479 Filed 5–8–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44625; FRL–5365–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of data from a test designed to determine the presence of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans in chloranil (CAS No. 118–75–2). These data were submitted pursuant to a final test rule issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after these data are received by EPA.

I. Test Data Submissions

Test data were submitted by Chugai Boyeki (America) Corporation for their chloranil pursuant to a TSCA section 4 test rule at 40 CFR Part 766 and were received by EPA on March 26, 1996. The submission includes a final report entitled ''Analysis of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans in Chloranil.'' The testing was conducted to determine the presence of polychlorinated dibenzo-p-dioxins and dibenzofurans in chloranil, a chemical used in the production of pigments and dyes, and as a binding agent in the production of tires. EPA promulgated this test rule because of concern that certain organic chemicals may be contaminated by polyhalogenated dibenzo-p-dioxins and/or polyhalogenated dibenzofurans and may present an unreasonable risk of injury to human health or the environment.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44625). This record includes a copy of the study reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 29, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–11618 Filed 5–8–96; 8:45 am]

BILLING CODE 6560–50

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR Part 1320 authority, comments requested

May 1, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before July 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0576.

Title: Application for Renewal of Amateur Radio Station License.

Form No.: FCC 610R.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 2,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 168 hours.

Needs and Uses: Amateur Radio Service licensees are required to apply for renewal of their radio station license every ten years. In lieu of filing a ''long'' form (FCC 610), the Commission allows this ''short'' form renewal to be filed. This form is computer generated and sent to licensees near the end of their ten year license term. They can renew simply by signing and returning the application as opposed to answering several questions on the ''long'' form. Commission personnel will use this data to determine eligibility for radio station renewal authorization and to issue a license. Data is also used by

compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes. The data collected is required by the Communications Act of 1934, as amended, and International Treaties.

A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application.

OMB Approval Number: 3060–0079.

Title: Application for An Amateur Club, Races or Military Recreation Station License.

Form No.: FCC 610B.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 168 hours.

Needs and Uses: FCC Rules require applicants to file FCC Form 610B for new, modified, or renewed Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation station licenses. The data is used by Call Sign Administrators and Commission staff to determine if the applicant is eligible for Amateur Club, RACES, or Military Recreation Station License. The information is used in issuing authorizations of service and is vital to maintain an acceptable database.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11523 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

May 1, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0069.

Title: Application for Commercial Radio Operator License.

Form No.: FCC 756.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 19,000.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 6,270 hours.

Needs and Uses: This collection of information is necessary to establish the identity of persons applying for radio operator licenses. The Commission is authorized under Section 303(l)(1) of the Communications Act of 1934, as amended, to issue radio operator licenses to those persons found to be qualified. To properly identify those qualified persons, it is necessary to collect the full name and date of birth for each applicant. Collection of photographs of applicants for radiotelegraph licenses is in accordance with Paragraph 3870 of Article 55 of the International Radio Regulations. The information and photographs are required since they appear on the license authorization.

The form is being revised to allow a purpose of application block for modification. Modification is to be checked only if adding the Ship Radar Endorsement and/or Six Months Service Endorsement to their existing license. Applicants previously applied as purpose ''New'' to add these endorsements. In addition, a space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. These changes do not change the number of respondents or the burden time.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11524 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 authority, Comments Requested

May 2, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before July 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form No.: FCC 703.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other For-Profit;Not-for-Profit Institutions.

Number of Respondents: 907.

Estimated Time Per Response: 36 minutes.

Total Annual Burden: 544 hours.

Needs and Uses: This collection of information is used to determine eligibility for licenses. Without this information, violations of ownership regulations could occur. FCC Rules require that applicants in the Private Land Mobile, General Mobile, Private Operational Fixed Microwave, Marine, Aviation and Experimental Radio Services submit FCC 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station.

The form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules - 47 CFR Parts 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, 94.27 and 95.111.

A space for the applicant to provide an Internet address is being added to the form. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11527 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 1, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form Number: N/A.

Type of Review: Revision of existing collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: This collections includes a number of rule sections, the number of respondents varies depending on the rule section. The total number of respondents for all the sections is estimated at 560.

Estimated Time Per Response: The time per response varies depending on the requirement from 1.4 hours per respondent to 30 hours per respondent.

Needs and Uses: This collection consolidates two existing collections 3060–0689 ''Foreign Carrier Entry Order and 3060–0686 Streamlining the International Section 214 Authorization Process and Tariffing Requirements''. This information collection is necessary to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. It is also necessary for the Commission to maintain effective oversight over U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have market power.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–11525 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 30, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0571.

Title: Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment.

Form Number: FCC Form 393.

Type of Review: Revision of existing collection.

Respondents: Businesses or other for-profit entities; state, local and tribal governments.

Number of Respondents: 120 (80 cable operators + 40 LFAs).

Estimated Time Per Response: 1–40 hours. FCC Form 393 has an estimated average burden of 40 hours for cable operators to complete. Cable operators who contract out the burden of filing will take 1 hour to coordinate information with those contractors. In addition, there is an estimated average burden of 15 hours for each FCC Form 393 filing that LFAs must review.

Total Annual Burden: 3,020 hours (2,420 for operators + 600 for LFAs). For cable operators: we estimate approximately 80 FCC Form 393 filings will be made this year, 50% with the Commission and 50% with LFAs. We estimate that 25% of cable operators will contract out the burden of filing and that it will take 1 hour to coordinate information with those contractors. The remaining 75% of operators will employ in house staff to complete the application. 20 filings (25% contracted out) x 1 hour = 20 hours. 60 filings (75% in house) x 40 hours = 2,400 hours. Total burden for operators = 2,420 hours.

For LFAs: we estimate 40 (50%) of remaining FCC Form 393 filings will be reviewed by LFAs. This third party disclosure was not previously reported by the Commission. 40 FCC Form 393s reviewed by LFAs at 15 hours each = 600 hours.

In the prior Federal Register notice soliciting public comment for this collection, the Commission initially estimated a total burden of 12,000 hours (300 annual filings @ 40 hours each). Based on current information, we further reduce the estimated number of annual FCC Form 393 filings to now be 80 per year, with 50% of filings being reviewed by LFAs. The burden for LFA review of FCC Form 393s @ 15 hours per review was not reported in the prior Federal Register summary soliciting initial public comment.

Costs for respondents: $80,160. Printing and postage costs are estimated at $2 per Form 393 filing. 80 annual filings x $2 = $160. We estimate assistance will be performed by outside accounting/legal assistance at an average of $100/hour for 25% of the Form 393 filings. $100/hour x 20 filings (25% of Form 393 filings) x 40 hours = $80,000. Total annual cost for respondents = $160 + $80,000 = $80,160.

In the prior Federal Register notice soliciting public comment for this collection, the Commission did not report costs to respondents for complying with this information collection. We now report the various costs for printing, postage and contracting out for legal/accounting assistance in completing FCC Form 393 filings.

Needs and Uses: The data are used by FCC staff and LFAs to determine whether cable rates in effect prior to May 15, 1994 for basic service, cable programming service and associated equipment are reasonable under FCC regulations. Cable operators use FCC Form 393 to submit their basic rate schedule to LFAs certified prior to May 15, 1994 or the FCC (in situations where the FCC has assumed jurisdiction). Cable operators also file FCC Form 393 with the FCC when responding to a complaint filed with the Commission about cable programming service rates and associated equipment in effect prior to May 15, 1994. FCC Form 393 is a one-time only filing requirement for operators. Local franchise authority (''LFA'') certifications to regulate rates are not granted retroactively. Rate complaints are also not permitted to retroactively challenge rates in effect prior to May 15, 1994; therefore, no future entities will be impacted by this filing requirement. In fact, the Form 393 filing process is nearly exhausted. The only remaining entities impacted by this requirement are those initially required to file but have not yet done so, and those who filed incorrect or incomplete FCC Form 393s.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–11526 Filed 5–8–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, May 14, 1996 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, May 16, 1996 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1996–12: Arthur Block on behalf of the Lenora B. Fulani for president '96 Committee
Advisory Opinion 1996–15: Marilyn Hughes, State of Oklahoma Ethics Commission
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–11807 Filed 5–7–96; 2:55 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-8893) published on page15946 of the issue for April 10, 1996.

Under the Federal Reserve Bank of Cleveland heading, the entry for Croghan Bancshares, Inc., Fremont, Ohio, is revised to read as follows:

1. Croghan Bancshares, Inc., Fremont, Ohio; to acquire 100 percent of the voting shares of Union Bancshares Corp., Bellevue, Ohio, and thereby indirectly acquire Union Bank and Savings Company, Bellevue, Ohio.

Board of Governors of the Federal Reserve System, May 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–11561 Filed 5–8–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Horizon Bancorp, Inc., Beckley, West Virginia; to merge with Twentieth Bancorp, Inc., Huntington, West Virginia, and thereby indirectly acquire The Twentieth Street Bank, Huntington, West Virginia.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Perryton Bancshares, Inc., Perryton, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Perryton National Bank, Perryton, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Savings Bank of Washington Bancorp, Inc., Walla Walla, Washington; to acquire 100 percent of the voting shares of Inland Empire Bank, Hermiston, Oregon.

2. InterWest Bancorp. Inc., Oak Harbor, Washington; to merge with Central Bancorporation, Wenatchee, Washington, and thereby indirectly acquire Central Washington Bank, Wenatchee, Washington, and North Central Washington Bank, Omak, Washington.

Board of Governors of the Federal Reserve System, May 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–11562 Filed 5–8–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 23, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of Nova Scotia, Toronto, Ontario, Canada; to engage *de novo* through its subsidiary, Scotia Capital Markets (USA) Inc., New York, New York, in certain foreign exchange advisory and transaction services and in futures commission merchant activities,

pursuant to §§ 225.25 (b)(17) and (18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–11560 Filed 5–8–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD SUNSHINE ACT MEETING

TIME AND DATE: 8:00 a.m., May 20, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center record keeping.
2. Congressional/agency/participant liaison.
3. Benefits administration.
4. Investments.
5. Participant communications.
6. Approval of the minutes of the last meeting.
7. Thrift Savings Plan activity report by the Executive Director.
8. Review of selection criteria for software vendor.
9. Approval of the update of the FY 1996 budget and FY 1997 estimates.
10. Investment policy review.
11. Status of audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: May 6, 1996.

Roger W. Mehle, Executive Director,

Federal Retirement Thrift Investment Board.

[FR Doc. 96–11710 Filed 5–7–96; 12:29 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Intent To Prepare Environmental Impact Statement for the Consolidated Law Federal Office Building, Portland, OR

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended for the Consolidated Law Federal Office Building, in Portland, Multnomah County, Oregon. The EIS would evaluate the proposed project, other reasonable alternatives, and the no action alternative identified during the scoping process. Scoping would be accomplished through written correspondence, through a public scoping meeting, and through individual meetings with interested persons, groups, organizations, and federal, state, and local agencies.

ADDRESSES: Written comments on the scope of alternatives and potential impacts should be sent to GSA's environmental contractor, Herrera Environmental Consultants, at the following address: 2200 Sixth Avenue, Suite 601, Seattle, Washington, 98121.

DATES: Written comments should be sent to Herrera Environmental Consultants by May 25, 1996. Comments will also be accepted at a public scoping meeting from 4:30 p.m. to 7:30 p.m. on May 7, 1996 and May 8, 1996 at the location indicated below.

PUBLIC SCOPING MEETING: Comments and suggestions will be solicited at a public scoping meeting to be held at: Edith Green-Wendell Wyatt Federal Building, 1220 SW 3rd Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Meyer, Regional Environmental Program Officer, General Services Administration, (206) 931–7675 or Ms. Nona Diediker at Herrera Environmental Consultants, 2200 Sixth Avenue, Suite 601, Seattle, Washington, 98121, (206) 441–9080.

SUPPLEMENTARY INFORMATION: The General Services Administration, assisted by the environmental contractor, is considering preparation of a federal NEPA Environmental Impact Statement on a proposal to design and construct a new Consolidated Law Federal Office Building in Portland, Oregon. The scoping process would determine the level of effort, the scope of issues to be addressed in the environmental document, and identify the significant issues related to the proposed project. Scoping will be conducted consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508). GSA will serve as the lead agency for the preparation of the EIS pursuant to Section 1501.5(a) of the regulations.

Scoping

GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS, and in identifying any significant physical, biological, or socioeconomic environmental issues related to the alternatives. Scoping comments can be made verbally at the public scoping meeting, or in writing (see **DATES** and **ADDRESSES** section above for location and time of meeting). During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on the project alternatives. There will be opportunity to comment on preferences during the Draft EIS comment review phase.

Additional Information

A project information newsletter will be available at the public scoping meeting or can be obtained by contacting Nona Diediker at Herrera Environmental Consultants. The newsletter will describe in more detail the proposed project, alternatives, and the EIS process.

Mailing List

If you wish to be placed on our mailing list to receive further and future information as the EIS process develops, contact Herrera Environmental Consultants at the address or phone listed above.

Project Purpose, Historical Background, and Project Description

The House and Senate Subcommittees on Treasury, Postal Service, and General Government have determined a need exists for a facility to serve as a detention center for prisoners appearing before the Federal courts and for the consolidation of Federal law enforcement agencies in Portland, Oregon. The committees have directed the General Services Administration to undertake the necessary studies to address this requirement. Detention facilities in Portland for federal prisoners awaiting a trial and sentencing are limited. Federal law enforcement officials are forced to move federal prisoners back and forth from the federal prison in Sheridan, Oregon and other county holding facilities in Oregon and Washington. This situation often leads to many security and logistical problems.

The proposal to design and construct a 350,000 occupiable square foot office, court and 300-bed facility to consolidate federal law enforcement agencies and provide detention capabilities would aid in alleviating security and logistic problems by establishing an adjacency relationship to the new U.S. Courthouse. Site alternatives are presently under investigation and a delineated area has been identified as

follows: SW Taylor Street on the north, SW 1st Avenue on the east, SW Madison Street on the south, and SW 4th Avenue on the west.

Alternatives

The EIS would consider several action alternatives and a no action alternative. The facility would be located adjacent to the new U.S. Courthouse located at 1030 SW 3rd Avenue. Alternatives to be considered include:

1. Design and construction on a full block site bounded by SW Taylor Street on the north, SW 2nd Avenue on the east, SW Salmon Street on the south, and SW 3rd Avenue on the west;

2. Design and construction on a full block site bounded by SW Taylor Street on the north, SW 3rd Avenue on the east, SW Salmon Street on the south, and SW 4th Avenue on the west;

3. Design and construction on a full block site bounded by SW Main Street on the north, SW 1st Avenue on the east, SW Madison Street on the south, and SW 2nd Avenue on the west;

4. Acquisition then alternation of a leased building bounded by SW Taylor Street on the north, SW 1st Avenue on the east, SW Madison Street on the south, and SW 4th Avenue on the west, and,

5. No action.

Probable Effects

GSA will evaluate physical, biological and socioeconomic environmental impacts of the alternatives in the EIS. Potential impacts include, but are not limited to, changes in physiography; impacts to groundwater; changes to vegetation and wildlife; changes in open space and visual characteristics; impacts to air quality and noise, utilities, and transportation; changes in the social environment; and impacts to zoning and historical/cultural resources. The impacts will be evaluated both for the construction period and during the operation of the facility. Measures to mitigate any significant adverse impacts will be addressed.

Procedures

The EIS will be prepared based on the outcome of the scoping phase, A Draft EIS will be made available for public and agency comments, with a public hearing held to receive comments regarding the Draft EIS. Upon completion of the public review process, a Final EIS would be prepared to address issues raised during the Draft EIS and the public hearing.

Dated: April 26, 1996.

Richard J. Moen,

Legal Counsel, Region 10.

[FR Doc. 96–11542 Filed 5–8–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–10]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090.

The following requests have been submitted for review since the last publication date on January 23, 1996.

Proposed Projects

1. Variability of Respiratory Tract Dust Deposition in Workers—New—Adverse respiratory health effects in workers exposed to hazardous airborne materials can be prevented by reducing the concentration of the implicated agents below a threshold level. However, the actual ''safe'' work site concentration is determined by the airborne particulates that are actually deposited and retained in the worker's respiratory tract. The proportion deposited is in turn affected by the volume and flow rates of the worker's breathing patterns.

The goals of this investigation are to: (1) Develop a database of information related to workers' ventilatory patterns during performance of elemental industrial and commercial job activities, as well as specific dust-exposed work activities; (2) define expected variation in particle size dependent respiratory tract dust deposition related to breathing patterns representative of different job tasks; (3) investigate residual intersubject variability in respiratory tract dust deposition with explanatory variables such as height, gender, age smoking status, effective airway diameter, nasal geometry, and preexisting respiratory tract abnormalities.

This investigation should improve the understanding of the actual deposition of toxic substances in the lungs and help to validate or modify the existing models of human aerosol deposition.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Phase I:			
Screening	13	1	1
Deposition	13	1	3
Physio Mon:			
Screening	16	1	2
Work tasks	16	1	4
Phase II:			
Screening	276	1	2
Work tasks	276	1	4
Phase III:			
Screening	66	1	1
Physiol	66	1	2
Deposition	66	1	1

The total annual burden is 2068. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

2. Evaluation of the Efficacy of Back Belts for the Prevention of Low Back Injury—New—This study will provide information concerning the efficacy of a back supporting belt in preventing first and recurrent low back injuries. The research will be conducted with a major retail merchandise company, using selected company workers (those with highest lifting exposures) in selected

stores. NIOSH will obtain much higher quality information on the value of back belts in prevention of injuries in the workplace than is currently available, and the Institute will be able to make scientifically justified recommendations regarding their use of personal protective equipment to industry and the public.

Workers will respond to questions concerning job history, physical activity, smoking history, history of injury and back pain, psychosocial variables in the workplace, tasks performed on the job. Only data necessary for the purposes of this study will be collected, and the questionnaires will be group administered at the workplace.

Respondents	Number of respondents	Number of responses/respondent	Average burden/responses (in hours)
Telephone			
Interview I	2700	4	0.42
Interview II	2700	3	.42
Interview III	2250	2	.42
Interview IV	350	1	.42

The total burden hours is 9975. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11597 Filed 5–8–96; 8:45 am]

BILLING CODE 4163–18–P

[INFO–96–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Importation and Shipment of Etiologic Agents—(0920–0199)—Revision—The Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) authorizes the Secretary of Health and Human Services (HHS) to regulate the transfer of certain infectious agents harmful to humans. The Centers for Disease Control and Prevention (CDC) is the agency within the Department responsible for promulgating regulations. CDC is proposing a rule designed to ensure that select infectious agents are not shipped to parties not equipped to handle them appropriately, or who do not have legitimate reasons to use them and to implement a system whereby scientists and researchers involved in legitimate research may continue transferring and receiving these agents without undue burdens. Respondents include laboratory facilities such as those operated by government agencies, universities, research institutions, and commercial entities.

Those facilities requesting select infectious agents listed in the regulation must register with the Secretary of HHS, or with registering entities authorized by the Secretary, as capable and equipped to handle the select infectious agents in accordance with guidelines developed by CDC, the National Institutes for Health (NIH) and the Department of Defense.

Once registered, facilities must complete a federally-developed form, CDC Form EA–101, for each transfer of the agent. Information on this form will include the name of the requestor and requesting facility, the name of the transferor and transferring facility, the name of the responsible facility official for the transferor and requestor, the requesting facility's registration number, the transferring facility's registration number, the name of the agent(s) being shipped, and the proposed use of the agent. The package is being revised to include burden for laboratories to register with the Secretary. The total cost to respondents is estimated at $14,490.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total Burden (in hrs.)
Laboratory	100	16	.36	576
Shippers	20	45	.97	873
Total	.....	.....	.....	1,449

2. 1997 National Health Interview Survey, Basic Module—(0920–0214)—Revision—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the

sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2,000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign which was tested and partially implemented in 1996. Improved information technology was included, especially computer assisted personal interviewing (CAPI). This clearance is for the first full year of data collection using the redesigned NHIS data system. This data collection, planned for January-December 1997, will result in publication of new national estimates of health statistics and release of public use micro data files. The new data system is expected to be in the field for at least 10 years. The total cost to respondents is estimated at $697,500.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total Burden (in hrs.)
Family	42,000	1	0.5	21,000
Sample adult	42,000	1	0.5	21,000
Sample child	18,000	1	0.25	4,500
Total	.....	.....	.....	46,500

3. National Coal Workers' Autopsy Study Consent Release and History Form—(0920–0021)—Revision—Under the Federal Coal Mine Health & Safety Act of 1977, PL91–173 (amended the Federal Coal Mine & Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. The study is a service program to aid surviving relatives in establishing eligibility for black lung compensation. Because a basic reason for the post-mortem exam is research (both epidemiological and clinical), included are a minimum of essential information regarding the deceased miner, his occupational history, and his smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and will be correlated with pathologic changes and x-ray findings. The total cost to respondents is estimated at $1,250.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total Burden (in hrs.)
Pathologist.				
Invoice	300	1	.05	25
Report	300	1	.05	25
Next-of-Kin	300	1	.15	75
Total	.....	.....	.....	125

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11598 Filed 5–8–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1996

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of April, 1996. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since April 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

Comments: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the Federal Register (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the Federal Register (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of April, 1996

As part of our procedures, we are publishing a monthly notice in the Federal Register of all new and pending proposals. This notice contains proposals for the month of April, 1996.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Assistance payments Demonstration Project/ California Work Pays Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to California to allow two additional AFDC benefit reductions: (1) reduce the Maximum Aid Payment (MAP) by 4.9 percent across-the-board statewide; and (2) divide California counties into two regions based on housing costs, and reduce both the Need Standard and the MAP in the region with the lower costs. In addition, the State is requesting blanket authority for future reductions in AFDC payment levels in conjunction with welfare reform state law changes.

Date Received: 3/13/96.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Assistance Payments Demonstration Project/ California Work Pays Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to allow one additional provision: income of a senior parent living in the same household with a minor parent with a dependent child will not be deemed to the minor parent's child.

Date Received: 3/13/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: Florida—Family Responsibility Act.

Description: Statewide, would require dependent children and caretaker relatives under age 18 to remain in school; pay half the AFDC benefit increment for the first child conceived by an AFDC recipient and provide no cash benefits for a second or subsequent child; exclude from the AFDC budget child support payments for children subject to the family cap; require AFDC recipients not participating in JOBS or actively seeking employment to engage in 20 hours per week of community employment or work experience.

Date Received: 10/4/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Sallie P. Linton, (904) 921–5572.

Project Title: Georgia—Jobs First Project.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC—UP cases.

Date Received: 7/5/94.

Type: AFDC.

Current Status: Pending (not previously published).

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC–UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in

establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.

Date Received: 7/18/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Indiana—Impacting Families Welfare Reform Demonstration—Amendments.

Description: Statewide, proposes expansions and amendments to current demonstration to impose a lifetime 24-month limit on cash assistance and categorical Medicaid eligibility (12 months for resident alien); allow 1 month AFDC credit (to a maximum of 24 at any one time) for each 6 consecutive months full-time employment; count each month of AFDC receipt from another state within the previous 3 years as 1 month against the lifetime limit; restrict permissible ''specified relatives'' for AFDC children and minor parents; extend AFDC, Medicaid, and food stamp fraud disqualification penalties; establish 3 unexcused absences per year as the statewide definition of unacceptable school attendance; provide a voucher equal to 50% of assistance amount for family cap child for goods and services related to child care; divert AFDC grants to subsidize child care costs; establish an option for an employed AFDC recipient to receive guaranteed child care or an AFDC payment equal to the family's benefit before employment; require a child's mother to establish paternity as a condition of eligibility for the child and the caretaker; establish additional conditions of eligibility for AFDC; impose penalties for illegal drug use; base CWEP hours on the combined value of AFDC and Medicaid assistance; make JOBS volunteers subject to the same sanctions as mandatory participants; continue eligibility for AFDC recipients until countable income reaches 100% of the federal poverty guidelines; expand voluntary quit definition and penalties; impose income limits on transitional Medicaid and child care and limit each to 12 months in a person's lifetime; with some exceptions, deny Medicaid under all coverage provisions to those determined ineligible as a result of AFDC welfare reform provisions; restrict Medicaid payments made to employees with employer's health care benefits to the lesser of the employee's insurance premium or the amount the state would otherwise pay; and require minor parents to live with a legally responsible adult and count the income and resources of non-parent adults.

Additional provisions: Food Stamp recipients could be required to participate CWEP and job search; increase AFDC and Food Stamp penalties for non-compliance with CWEP and job search; require cooperation with child support as condition of eligibility for Food Stamps.

Date Received: 12/14/95; Amendment received 2/6/96.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: James H. Hmurovich, (317) 232–4704.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Amended pending demonstration to provide that the demonstration would: replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income, income and resources of children in school and interest income; count income and resources of adults, and at State option children, who receive SSI; exempt one vehicle without regard for equity value; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; eliminate eight week job search limitation; allow alcohol and drug screening and treatment as a JOBS activity; eliminate the 20-hour work requirement limit for parents with children under 6; delay the effective date of changes in household composition; make work requirements in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities and violations of employment and JOBS requirements.

Date Received: 7/26/94; amendment received 4/30/96.

Type: Combined AFDC/Medicaid.

Current Status: New (Amendment).

Contact Person: Diane Dystra, (913) 296–3028.

Project Title: Maine—Welfare to Work Program.

Description: Statewide, would require caretaker relatives to sign a family contract; require participation in parenting classes and health care services; provide one-time vendor payments in lieu of AFDC for the purpose of obtaining/retaining employment; provide voucher payments to both married and unmarried minor parents; limit JOBS exemptions; expand eligibility for Transitional Medicaid and Child Care and replace sliding-scale fees with flat-rate fees; reduce Transitional Medicaid reporting requirements; disregard entire value of one vehicle; and apply any federal savings to the JOBS program services. In selected sites, implement ASPIRE-Plus, a subsidized employment program, would cash out food stamps, divert AFDC benefits and pass through all child support collected to families who participate in ASPIRE-Plus.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Susan Dustin, (207) 287–3104.

Project Title: Maryland.

Description: Statewide, would expand, with some modifications, previously approved Family Investment Program (FIP) pilot county provisions to be statewide and introduce new provisions: replace the current $90 and $30-and-one-third exclusions with a flat 20% earned income deduction, 50% for self-employed earned income; limit the child care disregard to $175 in all cases; allow case managers to set AFDC certification periods up to 1 year and require eligibility to be re-established before the end of each certification period; modify JOBS exemption requirements; allow $2,000 in countable resources and exclude one vehicle per household, life insurance, and certain real property; count stepparent income only if it is more than 50% of the poverty level; allow non-custodial parents and stepparents to participate in JOBS; provide welfare avoidance grants of up to 3 months benefit amount (up to 12 months in special circumstances); allow IV-A child care funds in lieu of AFDC for families diverted from cash assistance; impose immediate full-family sanctions for fraud and for failure to cooperate with JOBS or child support enforcement requirements; reduce the adverse notification period to 5 days; eliminate the $50 child support pass-through; allow only 1 assistance unit per family or payee; eliminate deprivation as an eligibility factor; change treatment of lump sums; eliminate JOBS assessment and employability plans; and modify JOBS program requirements.

Date Received: 4/26/96.

Type: AFDC.

Current Status: New.

Contact Person: Kathy Cook, (410) 767–7055.

Project Title: Michigan—To Strengthen Michigan Families Demonstration Project (Amendment).

Description: Statewide, would require minor parents to live with their parent or other suitable adult; and require minor parents who have not graduated

from high school to attend school as a condition of family eligibility.

Date Received: 4/26/96.

Type: AFDC.

Current Status: New.

Contact Person: Dan Cleary, (517) 335–0015.

Project Title: Minnesota Family Investment Program (MFIP) (Amendment)

Description: Would amend MFIP by adding Ramsey County as an MFIP site. MFIP provisions include: a consolidation of AFDC, Food Stamps, and the State's Family General Assistance program into one cash grant, with a single set of rules and procedures; eligibility based on net income only; an asset limit of $2,000, with an exemption for vehicles with a combined equity value of up to $4,500; elimination of the 100-hour and work history rules for two-parent families; a benefit equal to the maximum grant increased by 20 percent, minus net income (net income excludes 38 percent of gross earnings), but benefits may not exceed the maximum grant level, which equals the combined value of AFDC and Food Stamps; child care is paid directly to the child care provider, up to the county maximum rate; a 10 percent grant reduction for non-compliant parents; mandatory participation in MFIP employment and training services for non-exempt, long-term recipients. MFIP operates in seven counties and the amendment would add Ramsey County.

Date Received: 3/29/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Chuck Johnson (612) 297–4727.

Project Title: Minnesota—Work First Program.

Description: In pilot counties, would provide vendor payments in lieu of regular AFDC benefits for applicants' rent and utilities for up to six months; sanction for at least six months job-ready applicants who fail to comply with job search and other applicants who fail to participate in JOBS orientation; and require part-time CWEP of unemployed, nonexempt job-ready individuals who fail to participate in job search for 32 hours/week or who after eight weeks of job search are not employed for at least 32 hours/week or not self-employed with a net income equal to the family's AFDC benefit. Individuals who refuse to participate in CWEP or are terminated from a CWEP job would incur a whole family sanction and become ineligible for AFDC for at least six months. Non-job-ready participants would be assigned appropriate education and training. Post-placement services would be provided for up to 180 days and Transitional Child Care and Medicaid without regard to AFDC receipt in 3 of the 6 months preceding ineligibility.

Date Received: 4/4/96.

Type: AFDC/Medicaid.

Current Status: New.

Contact Person: Gus Avenido, (612) 296–1884.

Project Title: Minnesota—AFDC Barrier Removal Project.

Description: Statewide, would expand AFDC-UP eligibility; treat minor parents living with a caretaker parent on AFDC as a separate filing unit and disregard the caretaker parents' earned income up to 200 percent of the federal poverty guideline; disregard earned income of dependent children who are at least half-time students as well as all their savings deposited into an individual development account; increase the auto-equity limit to $4,500; cease recovering overpayments (once every two years per case) due to an individual's new employment resulting in ineligibility; and determine AFDC benefit amount for a family in which all members have resided in the State for less than 12 months based on the payment standard of the state of immediate prior residence if less than Minnesota's.

Date Received: 4/4/96.

Type: AFDC.

Current Status: New.

Contact Person: Ann Sessoms, (612) 296–0978.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded.

Date Received: 9/20/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Hampshire—New Hampshire Employment Program and Family Assistance Program.

Description: Statewide, would replace AFDC with Employment Program administered by both Employment Security Agency and Family Assistance Program; require job search and other employment-related activities for first 26 weeks of receipt followed by work-related activities for 26 weeks; eliminate JOBS target group funding requirement and change JOBS reporting requirements; require recipients attending post-secondary or part-time vocational training to participate in work-related activities; eliminate JOBS services priority for volunteers; establish limits for provision of transportation and other JOBS services based on activity and local conditions; eliminate remoteness as exemption from JOBS; require non-custodial parents to participate in JOBS; increase earned income disregard to 50%; eliminate AFDC–UP eligibility requirements; allow transitional case management for up to one year; raise resource limit to $2,000 and exclude one vehicle and life insurance policies; pass through child support directly to family; take SSI income into account in determining eligibility/payment; eliminate conciliation and apply JOBS sanction of 50% of AFDC benefits for three months followed by no payment for three months, allowing option to increase initial sanction up to 100%; exempt pregnant women from JOBS only during third trimester; for minor parents cases, include in assistance unit any parent or sibling living in the home; eliminate gross income test; disregard educational grants; allow emergency assistance for families with employment-related barriers; allow State to eliminate the certificate option for child care and development block grant funds and use of these funds for capital improvement; eliminate ceiling on At Risk Child Care funds; provide that FFP for AFDC not be reduced during life of demonstration; fund computer system modifications at 80% FFP; require pregnant recipients to cooperate with child support; require that AFDC apply for Medicaid as a unit and not individually; eliminate requirement of receipt of AFDC for 3 of last 6 months in order to receive transitional Medicaid; and allow State to require that some individuals be assigned to a managed care program; substitute outcome measures for JOBS participation rates; change participation requirements for parents with children under 6, UP recipients and minors; establish a medical deduction; increase the sanction for non-cooperation with child support; exempt individuals with significant employment barriers from JOBS; treat lump sum income and all real property, except a home, as a resource; and use 20% of gross earned income as a Medicaid disregard. Also contains various Food Stamp waivers.

Date Received: 9/18/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: New Hampshire—New Hampshire Employment Program.

Description: In three pilot sites, would require work after 6 months of AFDC receipt; eliminate the exemption from JOBS for women in the second trimester

of pregnancy; eliminate the JOBS exemption for caretaker of a child under 3 but not less than 1 year of age; replace the earned income disregard of $90 and $30 and ⅓ with a 50% disregard which is not time-limited; raise the resource limit for recipients to $2,000; disregard full value of one vehicle per adult for applicants and recipients; apply a full family sanction voluntarily quitting a job or refusing to accept a job; apply a sanction of reducing the payment standard by 30% for one month for failure to comply with JOBS in the first instance, by 60% in the second instance for one month, and in the third instance apply a full-family sanction for three months or until compliance; and require non-custodial parents to participate in JOBS.

Date Received: 10/6/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: Oklahoma—Welfare Self-Sufficiency Initiative.

Description: In four pilots conducted in five counties each, would (1) extend transitional child care to up to 24 months; (2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; (3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and (4) pay lesser of AFDC benefit for previous state of residence or Oklahoma's for 12 months for new residents.

Date Received: 10/27/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Raymond Haddock, (405) 521–3076.

Project Title: Pennsylvania—School Attendance Improvement Program.

Description: In 7 sites, would require school attendance as condition of eligibility.

Date Received: 9/12/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.

Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

Date Received: 12/29/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.

Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC-UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.

Date Received: 6/12/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Linda Martin (804) 737–6010.

Project Title: Tennessee—Families First.

Description: Statewide, would impose 18 month time limit with 60 month lifetime limit on cash assistance for non-exempt families (extensions available under certain circumstances); require full-time (40 hours) work or combination of work and other activities such as education, training, or job search, unless exempt; eliminate many JOBS exemptions including lowering youngest-child exemption to those with a child less than 16 weeks of age; remove limits on periods of job search; impose a family cap with no increase in benefits for additional children; require unmarried teen parents without high school diploma or GED to participate in education or other approved activity; deny AFDC for three months if recipients voluntarily quit job or if applicant voluntarily quits employment within two months of AFDC application; impose whole family sanction for noncompliance with employment, training or work preparation activities; impose sanctions without a prior conciliation period; provide transitional child care and transitional Medicaid for 18 months and without regard to months of AFDC receipt; change earned income disregards; eliminate the 100-hour rule, work history and quarters of work requirements when AFDC recipient marries and disregard new stepparent's income up to set limit; hold harmless child support arrearages owed by the new husband/wife to his/her child in the new family unit as long as the parent continues to reside in the home; require that applicants and recipients sign Personal Responsibility Plan as condition of eligibility and assure that children attend school, receive regular immunizations and health checks, and the caretaker cooperates with child support enforcement; impose significant sanction for failure of children to attend school or obtain immunizations; impose whole family sanction for failure to cooperate with child support enforcement; deny AFDC for 10 years for those convicted of fraudulently receiving benefits from two states simultaneously; allow low-income entrepreneurs to establish special accounts up to $5,000; conform AFDC and Food Stamp rules by increasing resource limit to $2,000 and counting lump sum income as a resource in the month received and after, if retained; and increase auto limit to $4,600. In 12 counties allow individual development accounts up to $5,000 and in 1 county operate a Responsible Fatherhood Demonstration Pilot using IV–D funds.

Date Received: 5/1/96.

Type: Combined AFDC/Medicaid.

Current Status: New.

Contact Person: Glenda Shearon, (615) 313–5652.

Project Title: Utah—Single-Parent Employment Demonstration (Amendments).

Description: Would amend the current Single Parent Employment Demonstration (SPED), requiring preschool children to be immunized and other children to attend school; considering as a single filing unit each family with a child in common, including all children in the household related to either parent; permitting parents removed from the grant due to non-cooperation or fraud to remain eligible for JOBS services, including support services; and allowing a ''best estimate'' of earnings in lieu of actual earnings so long as estimate is within $100 of actual earnings. These amendments would initially be limited to the Kearns office and later expanded to other SPED sites.

Date Received: 2/7/96.

Type: AFDC.

Current Status: Pending.

Contact Person: Bill Biggs, (801) 538–4337.

III. Listing of Approved Proposals Since April 1, 1995

Project Title: Iowa—Family Investment Plan (Amendments).

Contact Person: Ann Weibers, (515) 281–7714.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research.)

Dated: May 6, 1996.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 96–11628 Filed 5–8–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0115]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Submit written comments on the collection of information by July 8, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (21 CFR 108.25(c)(1) and (c)(2), (d), (e), (g); 108.35(c)(1), (c)(2), (d), (e), (f), (h); 113.60(c); 113.83; 113.87; 113.89; 113.100; 114.80(b); 114.89; 114.100(a) through (d)) (OMB Control Number 0910–0037—Extension).

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *Clostridium botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with the Food and Drug Administration using Form FDA 2541 (21 CFR 108.25(c)(1) and 108.35(c)(2)). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (21 CFR 108.25(c)(2), 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes

and procedures must be posted near the processing equipment or made available to the operator (§ 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods), 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

Estimated Annual Reporting Burden

Form No.	CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
Form FDA 2541 (Registration)	108.25(c)(1) and 108.35(c)(1)	300	1	300	.17	51
Form FDA 2541a (Process Filing)	108.25(c)(2) and 108.35(c)(2)	1,000	6.5	6,500	.333	2,165
Form FDA 2541c (Process Filing)	108.35(c)(2)	1,000	.50	500	.75	375
	113.60(c)	?	?	?	?	?
	114.80(b)	?	?	?	?	?

Where question marks appear in the burden estimates, FDA does not have current information available. Public comments will be greatly appreciated.

Estimated Annual Recordkeeping Burden

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Recordkeeper	Total Hours
21 CFR Parts 108, 113, 114	5,388	1	5,388	250	1,347,000

There are no capital or operating and maintenance costs associated with this collection.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) isinsignificant because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: May 1, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–11515 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0139]

Bio-Cide International, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bio-Cide International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions in processing water and ice which directly contact seafood such as finfish, shellfish, and crustaceans for the control of naturally occurring spoilage microorganisms to increase shelf life and to enhance seafood product freshness.

DATES: Written comments on the petitioner's environmental assessment by June 10, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4499) has been filed by Bio-Cide International, Inc., 2845 Broce Dr., Norman, OK 73072. The petition proposes to amend the food additive regulations in part 173 Secondary Direct Food Additives Permitted in Food for Human Consumption (21 CFR part 173) to provide for the safe use of acidified sodium chlorite solutions in processing water and ice which directly contact seafood such as finfish, shellfish, and crustaceans for the control of naturally occurring spoilage microorganisms to increase shelf life and to enhance

seafood product freshness.The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 10, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: April 22, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–11512 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92F–0219]

Transcommerz AG; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B4325), filed by Transcommerz AG, proposing that the food additive regulations be amended to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hyroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and parrafin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 9, 1992 (57 FR 30496), FDA announced that a food additive petition (FAP 2B4325) had been filed by Transcommerz AG, c/o 7300 West Camino Real, Boca Raton, FL 33433. The petition proposed to amend the food additive regulations to provide for the safe use of α-hydro-ω-hydroxypoly-(oxytetramethylene), diphenylmethane diisocyanate, 1,4-butanediol, ethylenediamine, 1,3-benzenedimethanamine, diethanolamine, and 1,3,5-tris(4-*tert*-butyl-3-hyroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1H,3H,5H)trione as components of a polyurethane elastomer; and dimethyl-polysiloxane, α-(ρ-nonylphenyl)-ω-hydroxypoly(oxyethylene), and parrafin oil as components of sizing and finishing oils for the polyurethane elastomer in food-contact articles used in the processing and packaging of food, including meat and poultry. Transcommerz AG has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 23, 1996.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–11513 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95S–0181]

U.S.–European Union Mutual Recognition Agreement Activities; Pharmaceutical GMP's and Medical Devices; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a public docket through which it will make available information concerning its participation in bilateral Mutual Recognition Agreement (MRA) talks in the areas of pharmaceutical GMP's and medical devices being led by the Office of the U.S. Trade Representative (USTR) and the Department of Commerce (DOC) and by representatives of the European Commission.

ADDRESSES: Documents concerning FDA's bilateral MRA talks are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Walter M. Batts, Office of International Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4480.

SUPPLEMENTARY INFORMATION: The U.S. Government, led by USTR and DOC, is engaged in formal talks with the European Union (EU), led by Directorate-General I (External Relations) of the European Commission. The EU initiated these talks to facilitate access to foreign markets for their products and to facilitate access to the EU market for foreign products. The EU indicated that the latter purpose was in response to concerns raised by foreign countries, including the United States, that the ''Single Internal Market by 1992'' program would result in a ''fortress Europe'' that would disadvantage foreign firms. The EU is also pursuing separate MRA talks with other countries, including Canada, Australia, and Japan.

As a result of an EU request to identify products to be covered by the MRA talks and their proposal that pharmaceuticals and medical devices be included, the U.S. Government with support by the industry agreed that pharmaceuticals, GMP's, and medical devices should be among those areas included in the talks. FDA's discussions with the EU cover GMP's for human and animal drugs, human biologicals, and medical devices.

In 1989, prior to the initiation of the MRA talks by Directorate-General I, USTR, and DOC, FDA and Directorate-General III (Industrial Affairs) of the European Commission decided to begin discussions that may lead to an agreement in the pharmaceutical good manufacturing practices (GMP's) and medical devices area. FDA's primary motivation in seeking such an agreement was at that time, and still is, a desire to most effectively utilize limited resources. FDA recognized the

value of pursuing such agreements with selected foreign regulatory bodies in its 1992 ''Report of the Task Force on International Harmonization.'' The task force concluded that the development of memoranda of understanding (MOU's) is an effective means of facilitating international harmonization; of ensuring the safety, efficacy, and/or quality of products that are offered for import into the United States; and of efficiently using agency inspectional resources. The task force, however, cautioned that the negotiation of MOU's must be with foreign regulatory agencies that have appropriate authority and expertise to ensure the proper implementation of any MOU that may be agreed upon. A properly conceived and executed agreement with the European Commission would permit the use of EU Member State government inspectional information to assist FDA in its regulatory decisionmaking and could help to set priorities for foreign inspection or import surveillance programs. Early initiatives to pursue an MOU with the European Commission did not receive high priority by either side. Recently the MRA talks have served as a catalyst for reinvigorating these discussions.

The talks have been led by USTR and DOC with the Directorate-General I as their counterpart office in the European Commission. There have been six rounds of talks to date, beginning in April 1994. The most recent round of talks was held in Washington, DC, from November 13 through 15, 1995. FDA has participated in each round of discussions.

To provide an opportunity for public input into the pharmaceutical GMP discussions with the European Commission and the Member States, FDA hosted a public exchange meeting on March 31, 1995. The meeting was attended by approximately 40 persons representing the drug and biologics industries, consultants, and other organizations. Attendees expressed support for, as well as concerns regarding, the proposed agreement.

A delegation of FDA officials attended a pharmaceutical GMP workshop hosted by the European Commission in Brussels from April 3 to 5, 1995. The purpose of the meeting was to exchange information on inspection programs in the United States and the EU, and how each of the EU Member States carries out its role. The Canadian Health Protection Branch also attended the meeting and made a presentation on their pharmaceutical GMP program. At the conclusion of the workshop it was agreed that further cooperative efforts are needed before we could develop an MRA or MOU. Such efforts could include exchange of inspection reports, joint inspections, joint training of inspectors, and development of a joint inventory of facilities requiring inspection.

Also, following the conclusion of the workshop, industry representatives from the EU and the United States were invited to express their views. Both sides expressed support for an agreement. The U.S. pharmaceutical industry generally expressed the desire for a harmonized approach. The EU pharmaceutical industry expressed a desire for an approach that provided for mutual recognition of the current systems.

On May 1, 1995, a delegation of FDA officials also participated in meetings with EU officials and notified body representatives to allow both sides to better understand their respective medical device regulatory regimes. In addition to useful exchange of information and ''confidence building,'' the meetings helped to clarify several technical issues related to an MRA on medical devices.

Through this notice, FDA is establishing a public docket in order to make available at a convenient location certain information concerning its participation in these bilateral MRA talks. Information currently contained in this public docket includes the following:

Minutes of the FDA-sponsored public exchange meeting held on March 31, 1995.

Agenda of FDA-sponsored public exchange meeting held on March 31, 1995.

Statements of participants presented at the FDA-sponsored public exchange meeting held on March 31, 1995.

Summary of the April 3 through 5, 1995, Pharmaceutical GMP Workshop in Brussels.

Summary of the July 10 through 12, 1995, MRA talks in Brussels concerning pharmaceutical GMP's.

FDA summary of November 13 through 15, 1995, round of negotiations.

Presentation of Walter Batts entitled ''Mutual Recognition Agreement Negotiations with EU re: Pharmaceutical GMP's-FDA's Perspective,'' February 13, 1996.

Dated: May 1, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–11517 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[MB–098–N]

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the preliminary Federal fiscal year (FFY) 1996 national target and individual State allotments for Medicaid payment adjustments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. We are publishing this notice in accordance with the provisions of section 1923(f)(1)(C) of the Social Security Act and implementing regulations at 42 CFR 447.297 through 447.299. The preliminary FFY 1996 State disproportionate share hospital (DSH) allotments published in this notice will be superseded by final FFY 1996 DSH allotments to be published in the Federal Register subsequent to the publication of this notice.

EFFECTIVE DATE: The preliminary DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1996.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Social Security Act (the Act) requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs (referred to as disproportionate share hospitals (DSHs)). The payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 1923(f) of the Act and implementing Medicaid regulations at 42 CFR 447.297 through 447.299 require us to estimate and publish in the Federal Register the national target and each State's allotment for DSH payments for each Federal fiscal year (FFY). The implementing regulations provide that the national aggregate DSH limit for a FFY specified in the Act is a target rather than an absolute cap when determining the amount that can be allocated for DSH payments. The national DSH target is 12 percent of the total amount of medical assistance

expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY. (Note: Whenever the phrases ''total medical assistance expenditures'' or ''total administrative costs'' are used in this notice, they mean both the State and Federal share of expenditures or costs.)

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. The State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the ''State DSH allotment''.

Each State's DSH allotment for FFY 1996 is calculated by first determining whether the State is a ''high-DSH State,'' or a ''low-DSH State.'' This is determined by using the State's ''base allotment.'' A State's base allotment is the greater of the following amounts: (1) the total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

A State whose base allotment exceeds 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1996 is referred to as a ''high-DSH State.'' The FFY 1996 State DSH allotment for a high-DSH State is limited to the State's base allotment.

A State whose base allotment is equal to or less than 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1996 is referred to as a ''low-DSH State.'' The FFY 1996 State DSH allotment for a low-DSH State is equal to the State's DSH allotment for FFY 1995 increased by growth amounts and supplemental amounts, if any. However, the FFY 1996 DSH allotment for a low-DSH State cannot exceed 12 percent of the State's total medical assistance expenditures for FFY 1996 (excluding administrative costs).

A State that is classified as a high-DSH State for one year, because its base allotment exceeds 12 percent of its total medical assistance expenditures for that year, may not continue to meet the high-DSH State definition in other years. That is, if the State's base allotment for another year is equal to or less than 12 percent of its total medical assistance for that year, the State would be classified as a low-DSH State for that year. As a low-DSH State, the State could potentially receive growth for that year.

The growth amount for FFY 1996 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1995 and FFY 1996 multiplied by the State's final DSH allotment for FFY 1995. Because the national DSH limit is considered a target, low-DSH States whose programs grow from one year to the next can receive a growth amount that would not be permitted if the national limit was viewed as an absolute cap.

There is no growth factor and no growth amount for any low-DSH State whose Medicaid program does not grow (that is, stayed the same or declined) between FFY 1995 and FFY 1996. Furthermore, because a low-DSH State's FFY 1996 DSH allotment cannot exceed 12 percent of the State's total medical assistance expenditures, it is possible for its FFY 1996 DSH allotment to be lower than its FFY 1995 DSH allotment. For example, this occurs when the State experiences a decrease in its program expenditures between FFY 1995 and FFY 1996 and its 1995 FFY DSH allotment is greater than 12 percent of the total projected medical assistance expenditures for the current FFY. This is the case for the State of Rhode Island for FFY 1996.

There is no supplemental amount available for redistribution for FFY 1996. The supplemental amount, if any, is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool). The redistribution pool is equal to the national 12-percent DSH target reduced by the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the total of the low-DSH State growth amounts. Since the sum of these amounts is above the projected FFY 1996 national 12-percent DSH target, there is no redistribution pool and, therefore, no supplemental amounts for FFY 1996.

As prescribed in the law and regulations, no State's DSH allotment will be below a minimum of $1,000,000.

As an exception to the above requirements, under section 1923(f)(1)(A)(I)(II) of the Act and regulations at 42 CFR 447.296(b)(5) and 447.298(f), a State may make DSH payments for a FFY in accordance with the minimum payment adjustments required by Medicare methodology described in section 1923(c)(1) of the Act. The State of Nebraska's preliminary State DSH allotment has been determined in accordance with this exception.

We are publishing in this notice the preliminary FFY 1996 national DSH target and State DSH allotments based on the best available data we received from the States' August 1995 submissions of the Medicaid budget report (Form HCFA–37), as adjusted by HCFA. We intend to publish the final FFY 1996 DSH allotments in the Federal Register subsequent to the publication of this notice.

The final allotments are calculated using actual Medicaid expenditures for FFY 1995 as reported to HCFA on States' quarterly expenditure reports (Form HCFA–64) for FFY 1995 and estimates of Medicaid expenditures for FFY 1996 as reported to HCFA on States' Form HCFA–37 February 1996 submissions.

II. Calculations of the Preliminary FFY 1996 DSH Limits

The total of the preliminary State DSH allotments for FFY 1996 is equal to the sum of the base allotments for all high-DSH States, the FFY 1995 State DSH allotments for all low-DSH States, and the growth amounts for all low-DSH States. A State-by-State breakdown is presented in section III of this notice.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan under title XIX of the Act in FFY 1996, we classified that State as a ''high-DSH'' State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved plan under title XIX of the Act in FFY 1996, we classified that State as a ''low-DSH'' State. Based on this classification, there are 36 low-DSH States and 14 high-DSH States for FFY 1996.

Using the most recent data from the States' August 1995 budget projections (Form HCFA–37), we estimate the States' FFY 1996 national total medical assistance expenditures to be $160,184,881,000. Thus, the overall preliminary national FFY 1996 DSH expenditure target is $19,222,186,000 (12 percent of $160,184,881,000).

In the preliminary FFY 1996 State DSH allotments, we provide a total of $519,764,000 ($310,963,000 Federal share) in growth amounts for the 36 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1995 and FFY 1996. To compute this percentage, we first ascertained each low-DSH State's total FFY 1995 medical assistance and

administrative expenditures as reported on the State's August 15, 1995, submission of the Medicaid Budget Report (Form HCFA–37) through the ''cutoff'' date of September 8, 1995. The cutoff date is the date through which the August 1995 Medicaid budget report submission estimates are accepted and applied in preparing the States' Medicaid grant award for the upcoming quarter (October through December 1995). Next, we compared those estimates to each low-DSH State's total estimated unadjusted FFY 1996 medical assistance and administrative expenditures as reported to HCFA on the States' August 1995 Form HCFA–37 submission.

The growth factor percentage was multiplied by the low-DSH States' final FFY 1995 DSH allotment amount to establish the States' preliminary growth amount for FFY 1996.

Since the sum of the total of the base allotments for high-DSH States, the total of the State DSH allotments for the previous FFY for low-DSH States, and the growth for low- DSH States ($19,602,716,000) is greater than the preliminary FFY 1996 national target ($19,222,186,000), there is no preliminary FFY 1996 redistribution pool.

The low-DSH States' growth amount was then added to the low-DSH States' final FFY 1995 DSH allotment amount to establish the preliminary total low-DSH State DSH allotment for FFY 1996. If a State's growth amount, when added to its final FFY 1995 DSH allotment amount, exceeds 12 percent of its FFY 1996 estimated medical assistance expenditures, the State only receives a partial growth amount that, when added to its final FFY 1995 allotment, limits its total State DSH allotment for FFY 1996 to 12 percent of its estimated FFY 1996 medical assistance expenditures. For this reason, six of the low-DSH States received partial growth amounts.

As explained above, Rhode Island's preliminary FFY 1996 DSH allotment is lower than its final FFY 1995 DSH allotment. Also, in accordance with the minimum payment adjustments required by Medicare methodology, Nebraska's FFY 1996 State DSH allotment is $11,000,000.

In summary, the total of all preliminary State DSH allotments for FFY 1996 is $19,602,716,000 ($11,137,851,000 Federal share). This total is composed of the prior FFY's final State DSH allotments ($19,084,239,000) plus growth amounts for all low-DSH States ($519,764,000), minus the amount of reduction in Rhode Island's FFY 1996 DSH allotment ($1,286,000), plus supplemental amounts for low-DSH States ($0). The total of all preliminary FFY 1996 State DSH allotments is 12.2 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1996. The total of all preliminary DSH allotments for FFY 1996 is $380,531,000 over the FFY 1996 national target amount of $19,222,186,000.

Each State should monitor and make any necessary adjustments to its DSH spending during FFY 1996 to ensure that its actual FFY 1996 DSH payment adjustment expenditures do not exceed its preliminary State DSH allotment for FFY 1996 published in this notice. As the ongoing reconciliation between actual FFY 1996 DSH payment adjustment expenditures and the FFY 1996 DSH allotments takes place, each State should amend its plan as may be necessary to make any adjustments to its FFY 1996 DSH payment adjustment expenditure patterns so that the State will not exceed its FFY 1996 DSH allotment.

The FFY 1996 reconciliation of DSH allotments to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1996. Additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1996 will continue to be reconciled with each State's FFY 1996 DSH allotment as additional expenditure reports are submitted to ensure that the FFY 1996 DSH allotment is not exceeded. As a result, any DSH payment adjustment expenditures for FFY 1996 in excess of the FFY 1996 DSH allotment will be disallowed; and therefore, subject to the normal Medicaid disallowance procedures.

III. Preliminary FFY 1996 DSH Allotments Under Public Law 102–234

Key to Chart:

Column/Description

Column A = Name of State

Column B = Final FFY 1995 DSH Allotments for All States. For a high-DSH State, this is the State's base allotment, which is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000. For a low-DSH State, this is equal to the final DSH allotment for FFY 1995, which was published in the Federal Register on September 8, 1995.

Column C = Growth Amounts for Low-DSH States. This is an increase in a low-DSH State's final FFY 1995 DSH allotment to the extent that the State's Medicaid program grew between FFY 1995 and FFY 1996.

Column D = Preliminary FFY 1996 State DSH Allotments. For high-DSH States, this is equal to the base allotment from column B. For low-DSH States, this is equal to the final State DSH allotments for FFY 1995 from column B plus the growth amounts from column C.

Column E = High- or Low- DSH State Designation for FFY 1996. ''High'' indicates the State is a high-DSH State and ''Low'' indicates the State is a low-DSH State.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (R.A.) (5 U.S.C. 601 through 612), unless we certify that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of an R.A., States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the R.A. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice sets forth no changes in our regulations; rather, it reflects the DSH allotments for each State as determined in accordance with §§ 447.297 through 447.299.

We have discussed the method of calculating the preliminary FFY 1996 national aggregate DSH target and the preliminary FFY 1996 individual State DSH allotments in the previous sections of this notice. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for high-DSH States since we interpret the 12-percent limit as a target. Low-DSH States will get their prior FFY DSH allotments plus their growth amounts.

In accordance with the provisions of Executive Order 12886, this notice was reviewed by the Office of Management and Budget.

(No. 93.778, Medical Assistance Program)

Dated: February 21, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: April 5, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–11627 Filed 5–8–96; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

Organ Procurement and Transplantation Network (OPTN) Data System

(OMB No. 0915–0157)—Extension and Revision—The data collection system of the OPTN and Scientific Registry provides for collection of data on organ transplantation, including heart, kidney, liver, heart-lung, pancreas and small intestine transplants. The OPTN data collection is required under Section 372 of the Public Health Service Act and includes data on pre-transplant activities. This includes cadaveric and live donor characteristics, and histocompatibility testing that is used in the matching of donor organs with recipients. Section 373 of the Public Health Service Act requires the Scientific Registry to collect, analyze and report on clinical and scientific data of importance to post-transplant graft and patient function. This involves a routine, periodic, submission of data for each organ transplant patient at the time of transplant, one-year (or six months for heart transplant patients), and annually post-transplant until graft failure or patient death.

Information and data collected by the OPTN and Scientific Registry are used primarily to analyze policies for the allocation of donor organs, and to assess the clinical outcomes of transplantation. The data are also used by the committees and Board of Directors of the OPTN for developing and reviewing policies related to allocation, patient listing criteria, optimal organ preservation times, and infectious disease screening.

Respondents include organ procurement organizations (for cadaveric donor data), histocompatibility laboratories (for tissue typing data), and transplant hospitals (for pre- and post-transplant data on recipients). The data are used to issue two key reports—the Annual Data Report and the Report of Patient and Graft Survival Rates (issued biennially).

HRSA proposes to make only minor changes to the data elements to obtain more detailed information on transplant patients and their post-clinical course. For example, additional categories will be added to several items on the forms. HRSA invites comments on these and other possible changes to the OPTN and Scientific Registry datasets.

The estimated annual response burden is as follows:

Form Type	Number of respondents	No. of responses per respondent	Total responses	Hours per response	Total burden hours
1. Cadaver Donor Registration/Referral	69	217	15,000	[1] 0.2	3,000
2. Living Donor Registration	69	54	3,700	0.2	740
3. Donor Histocompatibility	51	196	10,000	0.1	1,000
4. Potential Recipient Form	69	275	19,000	0.1	1,900
5. Recipient Histocompatibility	51	392	20,000	0.1	2,000
6. Transplant Candidate Registration	69	638	44,000	0.1	4,400
7. Thoracic Registration	166	21	3,500	0.3	1,050
8. Thoracic Follow-Up	166	101	16,800	0.3	5,040
9. Kidney Registration	248	49	12,200	0.3	3,660
10. Kidney Follow-Up	248	399	111,000	[2] 0.2	22,200
11. Liver Registration	119	34	4,000	0.4	1,600
12. Liver Follow-Up	119	176	21,000	0.4	8,400
13. Pancreas Registration	120	8	1,000	0.2	200
14. Pancreas Follow-Up	120	34	4,100	0.2	820
15. Intestine Registration	26	4	100	0.2	20
16. Intestine Follow-Up	26	8	200	0.2	40
Total	799	357	285,600	20	56,070

[1] It is estimated that 15,000 of these forms will be completed each year but approximately 9,500 will be referrals only. For those patients, only the first page of the form and one question on the second page will be completed. The average completion time for all 14,000 forms is 0.2 hours.

[2] Includes an estimated 20,000 kidney transplant patients, transplanted prior to the initiation of the data system, October 1, 1987.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 3, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–11599 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (0915–0047)—Extension and Revision

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of their rights and responsibilities, that schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. For consistency with the current regulations which were amended recently (published in 61 FR 6118 on 2/16/96), minor changes have been made to the requirements included in this request for OMB approval.

Schools are free to use information technology to manage the information required by the regulations. The estimated burden is as follows:

RECORDKEEPING REQUIREMENTS

Reg./section requirement	No. of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2) Documentation of Cost of Attendance	290	1.17	339
57.208(a) Promissory Note	290	1.25	363
57.210(b)(1)(i) Documentation of Entrance Interview	290	1.25	363
57.210(b)(1)(ii) Documentation of Exit Interview	313	.33	103
57.215(a) & (d) Program Records	313	10	3,130
57.215(b) Student Records	313	10	3,130
57.215(c) Repayment Records	313	18.75	5,869
HPSL Subtotal	313	42.48	13,297
NSL Program:			
57.306(b)(2)(ii) Documentation of Cost of Attendance	435	.3	131
57.308(a) Promissory Note	435	.5	218
57.310(b)(1)(i) Documentation of Entrance Interview	435	.5	218
57.310(b)(1)(ii) Documentation of Exit Interview	909	.17	155
57.315(a)(1) & (a)(4) Program Records	909	5.0	4,545
57.315(a)(2) Student Records	909	1.0	909
57.315(a)(3) Repayment Records	909	2.5	2,273
NSL Subtotal	909	9.29	8,449

REPORTING REQUIREMENTS

Reg./sect. requirement	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
HPSL Program:					
57.205(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.206(a)(3) Student Financial Aid Transcript	5,000	1	5,000	.25	1,250
57.208(c) Loan Information Disclosure	290	72.41	21,000	.083	1,743
57.210(a)(3) Deferment Eligibility	[Burden included under 0915–0044]				
57.210(b)(1)(i) Entrance Interview	290	72.41	21,000	.167	3,507
57.210(b)(1)(ii) Exit Interview	313	15.97	5,000	.483	2,415
57.210(b)(1)(iii) Notification of Repayment	313	35.14	11,000	.167	1,837
57.210(b)(1)(iv) Notification During Deferment	313	28.75	9,000	.083	747
57.210(b)(1)(vi) Notification of Delinquent Accounts	313	15.97	5,000	.167	835
57.210(b)(1)(x) Credit Bureau Notification	313	12.78	4,000	.6	2,400
57.210(b)(4)(i) Write-off of Uncollectible Loans	26	1.8	48	.5	24
57.211(a) Disability Cancellation	16	1	16	.75	12
57.215(a) Reports	[Burden included under 0915–0044]				
57.215(a)(2) Admin. Hearings	0	0	0	0	0
57.216a(d) Admin. Hearings	0	0	0	0	0
HPSL Subtotal	5,313	15.26	81,064	.182	14,770

REPORTING REQUIREMENTS—Continued

Reg./sect. requirement	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
NSL Program:					
57.305(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.306(a)(2) Student Financial Aid Transcript	3,000	1	3,000	.25	750
57.310(b)(1)(i) Entrance Interview	435	27.59	12,000	.167	2,004
57.310(b)(1)(ii) Exit Interview	909	4.4	4,000	.483	1,932
57.310(b)(1)(iii) Notification of Repayment	909	7.37	6,700	.167	1,119
57.310(b)(1)(iv) Notification During Deferment	909	.77	700	.083	58
57.310(b)(1)(vi) Notification of Delinquent Accounts	909	5.5	5,000	.167	835
57.310(b)(1)(x) Credit Bureau Notification	909	9.9	9,000	.6	5,400
57.310(b)(4)(i) Write-off of Uncollectible Loans	45	2.13	96	.5	48
57.311(a) Disability Cancellation	14	1	14	.75	11
57.312(a)(3) Evidence of Educational Loans	[Inactive provision]				
57.315(a)(1) Reports	[Burden included under 0915–0044]				
57.315(a)(1)(ii) Admin. Hearings	0	0	0	0	0
57.316a(d) Admin. Hearings	0	0	0	0	0
NSL Subtotal	3,909	10.36	40,510	.30	12,157

Estimated total annual burden: 48,673 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 3, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–11600 Filed 5–8–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

[Docket No. FR–3917–N–73]

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donald Kline, Single Family Operations Division, telephone number (202) 708–0614, ext. 3511 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgage Record Change.

OMB Control Number: 2502–0422.

Description of the need for the information and proposed use: The Mortgage Record Change Form HUD–92080 is used by mortgagees to comply with HUD requirements for reporting the sale of mortgage between investors, 24.4031, and/or transfer of the mortgage servicing responsibility, 24 CFR 203.502, as appropriate.

The information required is used to update HUD's Single Family Insurance System and other related systems. Current data is necessary to establish mortgage premium liability, forward annual premium mortgage data to the appropriate mortgagee/servicer, and maintain premium receivable and program data regarding investors/servicer activity. Without the required data the premium collection/monitoring function would be severely impeded and program data would be unreliable. Annual expected amount due Regular Monthly Insurance Premiums (Section 530) is 3.23 billion and 1.85 billion for Risk-base premium. This information is essential for the Risk-base program, as HUD does case level accounting in recording premiums payments by mortgagees.

Agency form numbers: HUD–92080.

Members of affected public: Mortgagees.

An estimate of the total numbers of hours needed to prepare the information collection is 222,600 (burden of one tenth hour per response based on actual time required to complete form), the number of respondents is approximately 9,100, frequency of response is daily as required, and the volume of response per respondent 20–20,000 annually depending on size of their FHA portfolio.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 29, 1996.

Stephanie A. Smith,

Acting General Deputy, A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–11552 Filed 5–8–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–76]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty Belin, Telephone number (202) 708–0614 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Coinsurance claims Package (f).

OMB Control Number: 2502–0420.

Description of the need for the information and proposed use: Under Statute 12 USC 1715z–9 and Title II, Section 244 of the National Housing Act authorizes the Secretary of HUD to coinsure eligible multifamily mortgages against default. In addition to complying with statutory requirements, the information collected is used by HUD to determine the claim amount due the mortgages. The main purpose for the forms is for lenders to file a claim for insurance benefits.

Agency form numbers: HUD 27008, 27009B, 27009D, 27009F.

Members of affected public: Mortgagees participating in Section 223(f).

An estimation of the total numbers of hours needed to prepare the information collection is 5, the number of respondents is 5, frequency of response is 1, and the hours of response is 5.

Status of the proposed information collection: Reinstatement with change.

′Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–11553 Filed 5–8–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–75]

Government National Mortgage Association; Notice of Proposed Information Collection for Public Comment

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya K. Suarez, Government National Mortgage Association, Office of Program, Policy, Procedure, and Risk Management, Department of Housing and Urban Development, 451—7th Street, SW, Room 6222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya K. Suarez, on (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Schedule of Pooled Mortgages.

OMB Control Number: 2503–0010.

Description of the need for the information and proposed use: The form provides a means of identifying specific single family, multifamily, and manufactured housing mortgages in the pool and assures that all required mortgage and related documents have, in fact, been delivered to a document custodian. This information is necessary to assure Ginnie Mae's interest in the pooled mortgages in the event of a default

Agency form numbers: HUD form 11706.

Members of affected public: Business or other for-profit and the Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including the number of respondents, frequency of response, and hours of response:

HUD FORM 11706

No. of respondents		Frequency of responses		Total annual responses		Hour per response burden		Total hours
650	×	18	=	11,700	×	.25	=	2,925

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 26, 1996.

William E. Dobrzykowski,

Acting Executive Vice President, Government National Mortgage Association.

[FR Doc. 96–11554 Filed 5–8–96; 8:45 am]

BILLING CODE 4210–01–M

Office of Administration; Submission for OMB Review: Comment Request

[Docket No. FR 3919–N–03]

AGENCY: Office of Administration, HUD,

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 10, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (3) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT; Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 24, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Divsion.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public/Private Partnerships for Mixed-Finance Development for Public Housing Units; Project Proposal and Legal Authority for Public Housing Development (FR–3919).

Office: Public and Indian Housing.

OMB Control Number: 2577–0033.

Description of the Need for the Information and Its Proposed Use: The forms will provide the Department with sufficient information to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet the program requirements. PHAs must also provide information that must be met by the partnership before HUD will approve a proposal for mixed-finance development.

Form number: HUD–52470, 52471, 52472, 9009, 52483A, 52651A, 52485, 51971–I, and 52482.

Respondents: State, Local, or Tribal Government and Business or Other For-Profit.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	35		1		84.5		2,960
Information Collections	382		Varies		Varies		5,545
Recordkeeping	382		1		1		382

Total Estimated Burden Hours: 8,887.
Status: Revision.
Contact: Bill Flood, HUD, (202) 708–1640, ext. 4185; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 24, 1996.

[FR Doc. 96–11550 Filed 5–8–96; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–5101–00–K012, WYW–128830]

Notice of Availability of the Record of Decision for the Express Pipeline Project

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Wyoming State Director of the Bureau of Land Management (BLM) has issued a Record of Decision (ROD) stating the BLM's intent to grant a right-of-way (ROW) and associated temporary use permits across public lands to Express Pipeline Inc., for the construction, operation, and maintenance of a 24-inch buried crude oil pipeline from the Port of Wildhorse on the U.S.-Canada border to Casper, Wyoming.

ADDRESSES: Copies of the ROD may be reviewed at the following locations: Lewistown District BLM Office, 80 Airport Road, (contact Robert Padilla, Realty Specialist), Lewistown, Montana; Worland District BLM Office, 101 South 23rd Street, (Don Ogaard, BLM Project Manager) Worland, Wyoming; Casper District BLM Office, 1701 East ''E'' Street, (Pat Moore, Realty Specialist), Caper, Wyoming; Montana State Department of Environmental Quality (DEQ) (Art Compton) 1520 East 6th Avenue, Helena, Montana, and county and city libraries along the proposed pipeline route.

FOR FURTHER INFORMATION CONTACT: A copy of the ROD may be obtained from the Bureau of Land Management, Worland District Office, Attn: Don Ogaard, BLM Project Manager, P.O. Box 119, Worland, Wyoming 82401–0119, telephone (307) 347–5160.

SUPPLEMENTARY INFORMATION: Express Pipeline, Inc. proposes to construct, operate, and maintain a 24-inch pipeline from Wild Horse (located on the border between Montana and Canada) to Casper, Wyoming, to transport Canadian crude oil. On February 23, 1996, the final Environmental Impact Statement for the project was issued a 30-day public review period. The ROD was signed by the Wyoming State Director on April 15, 1996. The BLM intends to issue a ROW grant and associated temporary use permits for the 97 miles of public land that would be crossed on the 515-mile route.

Construction activities would be subject to a timing restriction designed to protect big game winter range and other wildlife habitat. The decision does not affect any state or private lands crossed by the proposed route, and does not create any right or easement nor establish eminent domain, across such lands. The BLM will not issue a Notice to Proceed with construction of the public lands segments of the ROW until an acceptable Plan of Development, containing the detailed construction standards, reclamation measures, and emergency contingency plans, has been submitted by Express Pipeline, Inc. and approved by the BLM.

APPEALS: This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4, Subpart E. If you wish to appeal, a Notice of Appeal must be filed in the Wyoming State BLM Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003–1828, within 30 days from the date of publication of this notice in the Federal Register. The Notice of Appeal shall state clearly and concisely why you think the decision is in error. A copy of the Notice of Appeal must be served, within 15 days, on the Regional Solicitor, Rocky Mountain Region; U.S. Department of the Interior; 755 Parfet Street, Suite 151; Lakewood, Colorado 80215. Within 30 days of the Notice of Appeal, the appellant must file a Statement of Reasons for the appeal. Appellants wishing a stay of the decision must file a Petition for Stay, pursuant to 43 CFR Part 4, Subpart B, and 43 CFR 2884.1, with the Notice of Appeal.

Dated: May 3, 1996.
Alan R. Pierson,
Wyoming State Director.
[FR Doc. 96–11596 Filed 5–8–96; 8:45 am]
BILLING CODE 4310–22–M

Bureau of Land Management

[MT–960–1990–00] Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte District Office, Bureau of Land Management.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 9 a.m. on May 22, 1996, and will continue through May 23, 1996, if all business is not completed on the 22nd. This is a regularly scheduled meeting; issues to be discussed will be Access (RS2477 and 393 Plan), Permit Security and Livestock Grazing (other than cattle). The meeting will be held in the District Office Conference Room at 106 N. Parkmont.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte Montana 59702; telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

James R. Owings,
District Manager.
[FR Doc. 96–11543 Filed 5–8–96; 8:45 am]
BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

Investigations Relating to Potential Breaches of Administrative Protective Orders, Sanctions Imposed for Actual Violations

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: This notice provides a summary by the International Trade Commission (Commission) of its investigations of (1) breaches of administrative protective orders (APOs) issued in connection with investigations under Title VII, and (2) certain violations of the Commission's rules.

This notice is intended to inform the public of the Commission's experience with APO breaches. The Commission also intends that this notice will educate and alert representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission. This notice is illustrative only and does not limit the Commission's rules or

standard APO. The notice does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs, and does not indicate how the Commission will rule in future cases.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: The discussion below illustrates APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during 1995 with respect to antidumping and countervailing duty cases. Also discussed are the Commission's investigations completed during 1995 of possible violations of Commission rule 207.3, commonly known as the ''24-hour rule.''

The Commission periodically reports a summary of its actions in response to violations of Commission APOs in an effort to educate those obtaining access to business proprietary information (BPI) under an APO of the common problems encountered in handling BPI and confidential business information (CBI). This is the sixth notice of its kind, the previous ones having been published at 56 Fed. Reg. 4846 (Feb. 6, 1991), 57 Fed. Reg. 12335 (Apr. 9, 1992), 58 Fed. Reg. 21991 (Apr. 26, 1993), 59 Fed. Reg. 16834 (Apr. 8, 1994), and 60 Fed. Reg. 24880 (May 10, 1995). The Commission intends to publish summaries at least annually, and more frequently as appropriate.

As part of the effort to educate practitioners about APO practice, the Commission's Secretary issued in September 1991 *An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations.* A revision to the handbook is currently pending and is expected to be issued shortly. This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

I. Title VII Administrative Protective Orders

A. In General

APOs are issued in Commission investigations under Title VII of the Tariff Act of 1930 to provide certain party representatives access to BPI under conditions designed to protect the confidentiality of such information. The Commission is required to disclose under APO BPI collected by the Commission to authorized representatives of interested parties who are parties to such investigations. 19 U.S.C. 1677f. The Commission has implemented procedures governing this disclosure, which is accomplished under an APO issued by the Secretary to the Commission. 19 C.F.R. § 207.7. An important provision of the Commission's rules relating to APOs is the ''24-hour rule'' that provides parties with an extra day in which to file the public version of certain submissions containing BPI. 19 C.F.R. § 207.3. The 24-hour rule, which permits correction of the bracketing of BPI during that extra day, was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule.

The Commission Secretary provides BPI only to ''authorized applicants'' who agree to be bound by the terms and conditions of an APO. The Commission has revised its standard APO forms for antidumping and countervailing duty investigations to reflect recent regulatory changes and Commission practice. The Commission has also created a new APO form for use in section 201 investigations. The standard APO form for antidumping and countervailing duty investigations issued by the Commission in 1995 required the applicant to swear that he or she would:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under the APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under the APO without first having received the written consent of the Secretary and the party or the attorney of the party from whom such BPI was obtained;

(4) Whenever materials (e.g., documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under the APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under the APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information— To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provisions of the APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions as the Commission deems appropriate, including the administrative sanctions set out in the APO. Breach of the protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along

with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission. In addition, the Commission may take actions other than sanctions, such as the issuance of letters of warning.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through the APO procedure. Consequently, they are not subject to the APOs' requirements with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. § 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. § 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

B. Investigations of Alleged APO Breaches

In an antidumping or countervailing duty investigation, the investigation of an alleged APO breach generally proceeds as follows. The Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. However, in some cases, the Commission has determined that although a breach has occurred sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate action to be taken if a breach has occurred.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. § 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have involved: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI in certain circumstances.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI, and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as whether the breach was unintentional, lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, the promptness with which the breaching party reported the violation to the Commission, and any relevant circumstances peculiar to the situation. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI.

We note that Commission rules permit economists or consultants to obtain access to BPI under the APO under the direction and control of an attorney under the APO, or upon their own responsibility if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. *See* 19 C.F.R. §§ 207.7(a)(3) (B) and (C). We caution that economists or consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

C. Specific Investigations in Which Breaches Were Found

The following case studies are presented to educate users about the types of APO breaches found by the Commission and the sanctions imposed and other actions taken by the Commission. In addition, the case studies discuss the factors considered by the Commission as mitigating the sanctions imposed in particular instances. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: Several economic consultants misdelivered materials containing BPI to persons who were not signatories to the APO. The materials were returned unopened. The Commission found that a breach had occurred, but determined not to sanction the economists. Instead, the Commission issued a warning letter to the economist who instructed another to compile and distribute the materials, and to the person who actually prepared the materials. A third person, who became involved only after the misdeliveries were discovered, was not found to have breached the APO. Mitigating factors included the fact the breach was unintentional, the persons involved had not been previously found to have breached an APO, that the

persons involved took immediate action to remedy it by retrieving all copies, that the Commission was immediately informed of the incident, and that the firm in question made changes in-house to prevent a recurrence.

Case 2: Counsel for a party to the investigation failed to bracket certain BPI in the confidential version of an attachment to a submission and also failed to redact BPI data from the public version of the submission. The attachment, prepared by an outside consultant who was a signatory to the APO, contained unbracketed proprietary data in the confidential version and unredacted BPI in the public version of the brief. Upon learning of the error, counsel notified the Secretary's office, and arranged for the persons receiving the unbracketed BPI to either destroy or return the documents in question. All copies of the defective briefs were either returned or destroyed. The Commission found the person who was responsible for preparation of the final document to have breached the APO. The Commission determined not to sanction the attorney, but rather sent a warning letter. Mitigating factors included the fact that the breach was inadvertent, the person involved had not been associated with any other APO breach inquiry, and actions were taken immediately to mitigate any harm resulting from the breach. Moreover, the version of the brief involved containing the BPI had not been reviewed by anyone not on the administrative protective order. The consultant was found not to have breached the APO because it was not the consultant's responsibility to prepare the public version of the document. Similarly, a colleague of the attorney was found not to have been involved in the preparation of the public version of the document, and therefore was not found responsible for the breach.

Case 3: Several economic consultants filed and served a public version of a document that contained BPI in a footnote in the document. Commission staff discovered the breach. Although the public version of the document had been placed in the Commission public files, it had not been reviewed by a member of the public before discovery of the breach. The Commission determined that a breach had occurred, and held the individuals responsible for preparing the public version of the submission and reviewing it for BPI responsible for the breach. The Commission did not sanction the individuals, however, but instead sent warning letters. Mitigating factors included the fact that the breach was inadvertent, none of the individuals charged with the breach had breached an APO previously, and the individuals took immediate actions to mitigate any harm arising from the breach in the investigation, once they were informed that it had occurred. The Commission also considered the fact that although the information was received by a person not on the APO, the recipient did not review the information, and it was returned unread. The clerk who prepared the document was not held responsible for the breach, since the individual's activities appeared to be clerical in nature, and did not appear to involve reviewing the document to ensure that all BPI had been deleted. Additionally, a consultant whose name appeared on the document was not held responsible for the breach since the individual was not involved in preparing the public version of the document or in reviewing the document for BPI.

Case 4: An attorney failed to update the APO service list and as a result, improperly served copies of the confidential version of a submission on persons no longer subject to the APO. The Commission determined that the person responsible for improperly serving the APO version of the submission had breached the APO. The Commission decided not to sanction the attorney, but instead sent a warning letter. Mitigating factors included the fact that the breach was inadvertent, that the individual responsible for the breach had not previously breached an APO, and that immediate action was taken to mitigate any harm arising from the breach. Finally, although the document containing BPI was received by non-APO signatories, the Commission investigation revealed that the document was not actually viewed by anyone not on the APO. Two other attorneys who were involved in the Commission investigation were found not to be responsible for the breach.

Case 5: An attorney filed and served a public version of a document in which the attorney failed to properly redact information in brackets. The Commission determined that the attorney had breached the protective order. The Commission did not sanction the attorney, but instead issued a warning letter. Mitigating circumstances included the fact that the breach was inadvertent, the individual had not previously breached an APO, and the individual discovered the breach and took immediate actions to mitigate any harm arising from the breach. Additionally, the document was not actually reviewed by anyone not on the APO.

Case 6: Counsel filed a public version of a document and inadvertently filed with the Commission the master copy of the public version consisting of confidential pages with removable (and not always opaque) redaction tape covering the BPI. Commission staff discovered the defect in the filing and notified counsel prior to placement of the document in the public file. The Commission found an attorney and legal secretary responsible for the breach. The Commission determined to hold the legal secretary responsible for the breach because that individual was directly responsible for placing the copies of the public version of the documents into the envelopes that were delivered to the Commission. The Commission did not sanction the secretary, but instead issued a warning letter. In deciding not to sanction the secretary, the Commission took into account the fact that the breach was inadvertent, no BPI was disclosed to any party not under an APO, and it was the individual's first breach. The Commission also determined that the attorney responsible for overall supervision of the non-attorney staff, and who signed the public version of the brief that was filed, had breached the APO. The Commission sent a private letter of reprimand to the attorney because it was the individual's second breach of an APO in a relatively short period of time. A colleague was found not to have breached the APO since the individual was not in the office the day that the breach occurred.

Case 7: Counsel for a party to the investigation filed and served a public version of a document in which counsel failed to properly bracket and redact BPI that appeared in a footnote. Upon learning of the error, counsel immediately arranged for the individuals under the APO receiving the unbracketed BPI to delete the information before forwarding the document to any person not on the APO. Counsel also notified the Commission and filed replacement pages correcting the error. The Commission determined that a breach had occurred and held the individuals responsible for preparation and review of the document for confidential information responsible for the breach. The Commission did not sanction the individuals, but instead issued warning letters. Mitigating factors included the fact that the breach was inadvertent, the individuals had not previously breached an APO, and immediate actions were taken to mitigate any harm arising from the breach. Further, the version of the

document containing the BPI was not viewed by anyone not on the APO.

D. Investigations Involving the ''24-hour Rule''

During 1995, the Commission completed five investigations of apparent violations of the 24-hour rule, set forth in 19 C.F.R. § 207.3. All of these apparent violations of the Commission's rules involved changes to a document other than bracketing and deletion of BPI. The rule specifically states that changes other than bracketing and deletion of BPI are not permitted. Practitioners should be aware that there is no express provision in the Commission rules that allows a party to make corrections, other than bracketing corrections, to a submission. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, it must ask for an extension of time to file an amended document pursuant to rule 201.14(b)(2).

Case 1: Counsel filed a letter with the Commission enclosing replacement pages for the confidential version of their submission and noting numerous typographical errors in their submission. Counsel added the changes to the public version of their submission during the 24-hour period allowed to correct bracketing. Only one of the changes involved bracketing or deletion of business proprietary information. Counsel did not request leave of the Commission to make the non-bracketing changes. The Commission determined that the 24-hour rule had been violated. Counsel was not sanctioned, but instead all of the signatories on the document were issued warning letters. The Commission considered the fact that counsel notified the Commission of the changes in their cover letter and replacement page; the changes were relatively minor; and the attorneys involved had no previous record of violations of the 24-hour rule.

Case 2: Counsel filed a public version of a document which contained numerous changes to the wording in an exhibit from the confidential version filed the previous day. Counsel explained that the reason for the change was that a prior electronic draft of the document was inadvertently used to prepare the public version. The Commission determined not to sanction counsel, but instead issued warning letters to lead counsel and the person who transmitted the corrected pages. In deciding to issue a warning instead of a sanction, the Commission considered the fact that the changes were relatively minor, technical in nature and seemingly inadvertent.

Case 3: Counsel for a party in an investigation filed a public version of the brief during the 24-hour period. Due to the number of bracketing changes, counsel refiled an entire confidential brief rather than replacement pages. In addition to changing brackets, counsel included a table of contents, which was not filed with the original confidential brief. Counsel's letter of transmittal made no mention of the change, nor did counsel seek permission to file the table of contents. The Commission found that the 24-hour rule had been violated. The Commission did not sanction counsel, but instead issued a warning letter. The Commission considered the fact that the addition of a table of contents to counsel's submission was only a minor change, which was technical in nature and seemingly inadvertent, and neither added new information nor altered the substance of the information provided. Counsel was reminded, however, that the 24-hour rule cannot be used to cure defects in original filings.

Case 4: Counsel for a party to the investigation filed a public version of a brief during the 24-hour period which contained additional words. Counsel also filed replacement pages for the confidential version of the document which contained the same changes. While counsel did point out the change in its cover letter, counsel did not seek leave of the Commission to make the change. The Commission determined that counsel had violated the 24-hour rule. The Commission issued a warning letter to the attorney who signed the cover letter and who admitted responsibility for the preparation of the letter and changes to the document. In determining not to sanction the individual, the Commission considered the fact that the change was only a minor technical correction which did not add any new information or alter the substance of the information provided. Additionally, the Commission considered the fact that counsel, in its letter, notified the Commission of the change and its location, and therefore it did not appear that counsel was attempting to circumvent rule 207.3(c).

Case 5: Counsel for a party in the investigation filed an errata sheet in response to a Commission ruling regarding BPI, attempting to delete a word and replace it with a phrase. The submission was rejected for filing by the Secretary and was stricken from the record. The Commission determined that the 24-hour rule was violated but that no further action was necessary.

Issued: May 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11520 Filed 5–8–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–744 (Preliminary)]

Certain Brake Drums and Rotors From China

Determinations

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of certain brake drums that are alleged to be sold in the United States at less than fair value (LTFV).[3] The Commission also determines,[4] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain brake rotors that are alleged to be sold in the United States at LTFV. Both certain brake drums and brake rotors are provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States.[5]

Background

On March 7, 1996, a petition was filed with the Commission and the Department of Commerce by the Coalition for the Preservation of American Brake Drum and Rotor

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Peter S. Watson not participating.

[3] Commissioner Carol T. Crawford finds that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain brake drums that are alleged to be sold in the United States at LTFV.

[4] Chairman Peter S. Watson not participating.

[5] Certain brake drums and certain brake rotors are made of gray cast iron, may be finished, semifinished, or unfinished, and range in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The subject products are for certain motor vehicles (namely, automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half''), and do not contain in the casting a logo of an original equipment manufacturer that produces vehicles sold in the United States. Brake drums and brake rotors covered in these investigations are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums and rotors that are made of gray cast iron which contain a steel plate, but otherwise meet the above criteria.

Aftermarket Manufacturers,[6] alleging that industries in the United States are materially injured or threatened with material injury by reason of LTFV imports of certain brake drums and rotors from China. Accordingly, effective March 7, 1996, the Commission instituted antidumping investigation No. 731–TA–744 (Preliminary). Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 15, 1996 (61 FR 10788). The conference was held in Washington, DC, on March 28, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on April 22, 1996. The views of the Commission are contained in USITC Publication 2957 (April 1996), entitled ''Certain Brake Drums and Rotors from China: Investigation No.731–TA–744 (Preliminary).''

By order of the Commission.

Issued: May 1, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11521 Filed 5–8–96; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–374]

Certain Electrical Connectors and Products Containing Same; Notice of Issuance of Limited Exclusion Order and Cease and Desist Order and Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order to domestic respondent Foxconn International, Inc. (''Foxconn'') in the above-captioned investigation and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This investigation was initiated by the Commission on May 5, 1995, based on a complaint, as supplemented, and a motion for temporary relief filed by AMP Incorporated and The Whitaker Corporation (collectively ''complainants''). The following firms were named as respondents: Berg Electronics, Inc (''Berg''); Hon Hai Precision Industry Co., Ltd. (''Hon Hai''); Foxconn International (''Foxconn''); and Tekcon Electronics Corp (''Tekcon''). The complaint alleged that respondents have violated 19 U.S.C. § 1337 of the Tariff Act of 1930 (''section 337'') by importing and selling certain electrical connectors that infringe claims 17, 18, 20, 21, and 23 of complainants' U.S. Letters Patent 5,383,792 (the '''792 patent'').

On February 9, 1996 the presiding administrative law judge (ALJ) issued his initial determination (ID) terminating the investigation under Commission rule 210.17 as to the sole remaining respondent, Hon Hai Precision, Ltd. (''Hon Hai''), based on a violation of section 337 (in light of Hon Hai's failure to respond to a motion for summary determination). Specifically, the ALJ made the adverse determination that Hon Hai is in violation of section 337, finding that (1) Hon Hai manufactures electrical connectors which infringe claims 17, 18, 20, 21, and 23 of the patent in issue; (2) Hon Hai imports into the United States, sells for importation, or sells within the United States after importation such connectors; and (3) a domestic industry exists with respect to the articles protected by the patent in issue. In that ID, the ALJ also found that, pursuant to Commission rule 210.16(c), since Foxconn was found to be in default, Foxconn is presumed to violate section 337 by importing into the United States, selling for importation, or selling within the United States after importation certain electrical connectors that infringe claims 17, 18, 20, 21 or 23 of the patent in issue. On February 9, 1996, the ALJ also issued a recommended determination addressing the appropriate form of remedy and the appropriate bond.

On March 13, 1996, the Commission issued notice of its determination not to review the ALJ's final ID, thereby finding a violation of section 337, and requested written submissions on the issues of remedy, the public interest, and bonding. 61 Fed. Reg. 11221 (March 19, 1996). Submissions were received from complainants and the Commission investigative attorney. Respondents Hon Hai and Foxconn did not file submissions.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation of infringing electrical connectors and motherboards containing such electrical connectors manufactured and/or imported by Hon Hai or Foxconn. In addition, the Commission issued a cease and desist order directed to domestic respondent Foxconn requiring that firm to cease and desist from the following activities in the United States: importing, selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported electrical connectors and motherboards containing such electrical connectors.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of the limited exclusion order and cease and desist order, and that the bond during the Presidential review period shall be in the amount of twenty (20) percent of the entered value of the imported electrical connectors and $0.20 per imported electrical connector on motherboards containing such connectors. Finally, because the Commission has terminated this investigation, the Commission determined to deny as moot counsel for complainants' motion for withdrawal of appearance in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Copies of the Commission's remedial orders, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

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[6] The members of the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers consist of Brake Parts, Inc., McHenry, IL; Kinetic Parts Manufacturing, Inc., Harbor City, CA; Iroquois Tool Systems, Inc., North East, PA; and Wagner Brake Corp., St. Louis, MO.

By order of the Commission.

Issued: May 3, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11518 Filed 5–8–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 701–TA–367 (Preliminary)]

Certain Laminated Hardwood Flooring From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines[2], pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of certain laminated hardwood flooring, provided for in subheading 4421.90.98 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada.

Background

On March 7, 1996, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee on Laminated Hardwood Trailer Flooring (Anderson-Tully Co. (Tully), Memphis, TN; Cloud Corp. (Cloud), Harrison, AK; Havco Wood Products, Inc. (Havco), Cape Girardeau, MO; Industrial Hardwoods Products Inc. (IHP), Redwing, MN; and Lewisohn Sales Co. Inc. (Lewisohn), North Bergen, NJ), alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of laminated hardwood flooring from Canada. Accordingly, effective March 7, 1996, the Commission instituted countervailing duty investigation No. 701–TA–367 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 20, 1996 (61 FR 11430). The conference was held in Washington, DC, on March 28, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 22, 1996. The views of the Commission are contained in USITC Publication 2956 (April 1996), entitled ''Certain Laminated Hardwood Flooring from Canada: Investigation No. 701–TA–367 (Preliminary).''

By order of the Commission.

Issued: April 30, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–11522 Filed 5–8–96; 8:45 am]

BILLING CODE 7020–02–U

Submission for OMB Review; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to OMB for review. The proposed information collection is a ''generic clearance'' under which the Commission can issue questionnaires for the following types of statutory investigations: countervailing duty, antidumping, escape clause, NAFTA safeguard, market disruption, and ''interference with programs of the USDA.'' Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.5(a)(1)(iv) and 1320.10(a). Any comments should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

DATES: To be assured of consideration, comments should be submitted to OMB on or before June 10, 1996.

ADDRESSES: Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Victoria Baecher-Wassmer, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Robert Rogowsky (United States International Trade Commission, 500 E Street, S.W., Washington, DC 20436).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed collection of information and supporting documentation may be obtained from Debra Baker, (USITC, tel. no. 202–205–3180).

SUPPLEMENTARY INFORMATION:

(1) The proposed information collection consists of three forms, namely the *Sample Producers', Sample Importers', and Sample Purchasers' questionnaires.* Each ''sample'' is an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance.

(2) The types of items contained within the sample questionnaires are largely determined by statute. Actual questions formulated for use in a specific investigation depend upon such factors as the nature of the industry, the relevant issues, the ability of respondents to supply the data, and the availability of data from secondary sources.

(3) The data collected through the questionnaires issued under the generic clearance are consolidated and form much of the statistical base for the Commission's determinations in its statutory investigations. Affirmative Commission determinations in countervailing duty and antidumping investigations result in the imposition of additional duties on imports entering the United States. The data developed in escape-clause, market disruption, and interference-with-USDA-program investigations (if the Commission finds affirmatively) are used by the President/U.S. Trade Representative to determine the type of relief, if any, to be provided to domestic industries.

(4) Likely respondents consist of businesses or farms that produce, import, or purchase products under investigation. Estimated reporting burden that will result from the collection of information is presented below.

	Producers	Importers	Purchasers
Estimated average burden (hours) per response	36.4	37.2	22.0
Proposed frequency of response	1	1	1

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Peter Watson and Vice Chairman Janet Nuzum dissenting.

	Producers	Importers	Purchasers
Estimated number of respondents	940	980	880
Estimated total annual burden (hours)	34,200	36,450	19,350

No recordkeeping burden is known to result from the proposed collection of information.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202–205–1810.

Issued: May 2, 1996.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 96–11519 Filed 5–8–96; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–048]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that ARCO Chemical Company, of Newtown Square, Pennsylvania, has applied for an exclusive license to practice the inventions described and claimed in NASA Case No. ARC–12,069–1, ''Environmentally-Friendly Deicing Fluid''; NASA Case No. ARC–12,069–2, ''Environmentally-Friendly Deicing Fluid'', and NASA Case No. ARC–12,069–3, Anti-Icing or Deicing Fluid''; which are all assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Ken Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this notice must be received by July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–1592.

Dated: April 30, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–11541 Filed 5–8–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1201; License No. SNM–1168; EAs 95–236 and 95–215]

B&W Fuel Company d/b/a Framatome Cogema Fuels; Order Imposing Civil Monetary Penalty

I

B&W Fuel Company (Licensee) is the holder of Special Nuclear Material License No. SNM–1168 issued by the Nuclear Regulatory Commission (NRC or Commission) in September 1969. The license authorizes the Licensee to possess and use special nuclear material in accordance with the conditions specified therein. The license was last renewed on September 24, 1990, and is due to expire on September 30, 2000.

II

Inspections of the Licensee's activities were conducted during the period of June 12 through October 6, 1995. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated January 30, 1996. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated February 23, 1996. In its response, the Licensee admitted Violations B, and C, and questioned the regulatory basis for Violation A. In addition, the Licensee requested the NRC to reconsider both the severity level of the violations and the proposed civil penalty based on the stated minimal safety significance of the violations and the Licensee's corrective action.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of $12,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the Licensee was in violation of the Commission's requirements as set forth in Violation A of the Notice referenced in Section II above; and

(b) whether on the basis of Violation A, and the additional violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 29th day of April 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On January 30, 1996, the NRC issued to B&W Fuel Company, aka Framatome Cogema Fuels, (Licensee or B&W Fuel) a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for three violations identified during NRC inspections conducted during the period of June 12 through October 6, 1995. In its response dated February 23, 1996, the Licensee admitted Violations B and C, and questioned the regulatory basis for Violation A. In addition, the licensee requested the NRC to reconsider both the severity level of the violations and the proposed civil penalty based on the stated minimal safety significance of the violations and the Licensee's corrective action. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Restatement of Violation A

10 CFR 71.12(c)(2) requires, in part, that the licensee comply with the terms and conditions of the Certificate of Compliance and the applicable requirements of Subparts A, G, and H of 10 CFR Part 71.[1]

Effective April 25, 1983, to September 11, 1992, Condition 5(a)(3) of Certificate of Compliance No. 6294 specifies that the packaging is constructed in accordance with Babcock & Wilcox Company Drawing Nos. MS–135E and MS–82B.

Effective September 11, 1992, through August 4, 1995, Condition 5(a)(3) of Certificate of Compliance No. 9251 specifies that the packaging is constructed in accordance with B&W Fuel Company Drawing Nos. 1215598B and 1215599E.

Contrary to the above:

1. From August 1983 through July 10, 1995, the licensee made multiple shipments using UNC–2901 and/or BW–2901 shipping packages which were not constructed by B&W Fuel in accordance with, and did not conform to, Certificate of Compliance Nos. 6294 and 9251. Specifically, the dimensions of the inner cavity exceeded the dimensions on drawings Nos. MS–135E, MS–82B, 1215598B, and 1215599E.

2. From August 1983 through May 22, 1995, the licensee made multiple shipments using UNC–2901 and/or BW–2901 shipping packages which were not constructed by B&W Fuel in accordance with, and did not conform to, Certificate of Compliance Nos. 6294 and 9251. Specifically, the hole locations in the closure lids were outside the specifications of drawings Nos. MS–135E, MS–82B, 1215598B, and 1215599E.

The Licensee's Challenge of the Basis of Violation A

The Licensee maintained that its Quality Assurance Plan (QAP) for shipping containers allows and requires B&W Fuel to disposition all deviations concerning container design. The Licensee stated that ''A full reading of 71.12(c)(2) (emphasis added for clarity) is as follows: 'The general license applies only to a licensee who: (2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable and the applicable requirements of Subparts A, G, and H of this part; and'.''

The Licensee added that the NRC's approval of the B&W Fuel's QAP submitted under Subpart H indicates that B&W Fuel is authorized and is expected to act as specified in the ''B&W Fuel Company Radioactive Material Shipping Container Quality Assurance Plan'' which, the Licensee believes, constitutes the ''other approval as applicable'' discussed in 10 CFR 71.12(c)(2). The Licensee noted that B&W Fuel acted entirely in accordance with its approved QAP which allows and requires B&W Fuel to disposition all deviations to the container design basis. Therefore, the Licensee stated, the Notice does not appear to recognize that there is another document, submitted and approved by the NRC under Subpart H, which guided B&W Fuel's actions in dispositioning BW–2901 shipping container defects. B&W Fuel added that it has ''acted in good faith with the understanding that the differences in interpretation of Part 71 between the NRC and the licensees would be addressed and resolved in an industry forum.''

In addition, the Licensee argued that when ''the current Part 71 was invoked, most fissile material container users adopted quality programs which mirror 10 CFR 50 requirements.'' The Licensee stated that 10 CFR 71.131 clearly anticipates that deviations to the COC [Certificate of Compliance] may be found during use, and it does not require that the licensee cease to use the packaging. It does require, under subpart H, that the safety significance be determined prior to further use and that the conditions be reported to the NRC. The Licensee stated that ''NRC's approval of our Quality Plan caused FCF [Framatome Cogema Fuels, formerly B&W Fuel] to handle shipping containers in the same manner that we handle design deviations under our Part 50 Program.''

NRC Evaluation

10 CFR 71.12(a) states that ''a general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.'' As a condition of satisfying 10 CFR 71.12(a), 10 CFR 71.12(c)(2) provides that the general license applies only to a licensee who ''complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of Subparts A, G, and H of this part.''

The ''other approval'' cited in both 10 CFR 71.12(a) and 10 CFR 71.12(c)(2) does not refer to Quality Assurance Program approval; rather, the words ''other approval'' refer to forms of package approvals other than Certificates of Compliance. Examples of ''other approval'' would be letter amendments, amendments to facility licenses, and specific licenses for transportation. Furthermore, the regulations pertaining to quality control, set forth in Subpart H of Part 71, do not permit Licensees to use packages which do not comply with the conditions of the Certificate of Compliance. Section 71.105 specifically provides that Licensees must implement quality control which ''assures conformance to the approved design of each individual package used for the shipment of radioactive material.'' The regulations in Subpart H of Part 71 do not sanction the use of containers which do not comply with the regulatory requirements. Therefore, B&W Fuel, aka Framatome Cogema Fuels, has incorrectly interpreted the meaning of ''other approval'' as used in 10 CFR 71.12.

With regard to the Licensee's argument regarding 10 CFR Part 50 requirements, the NRC notes that such argument is irrelevant because the requirements in 10 CFR Part 50 differ from those in 10 CFR Part 71. The Licensee's handling of shipping containers in the same manner that it handles design deviations under Part 50 is not authorized under 10 CFR 71.

The NRC concludes that Violation A occurred as stated.

Summary of Licensee's Request for Mitigation and Reconsideration of Severity Level

The Licensee offered several arguments in support of its request for mitigation of the proposed penalty. Below is a summary listing of the Licensee's arguments that are related to its request for mitigation, some of which have been consolidated. The NRC's evaluation follows each argument.

1. The Licensee disagreed with the NRC's characterization of the violations. Specifically, B&W Fuel stated that it believes that, taken by themselves, none of the violations would constitute a Severity Level III violation; therefore, taken together B&W Fuel cannot tell what part of the civil penalty is applicable to each part.

NRC Evaluation

The purpose of aggregating violations as stated in Section IV.A of the Enforcement Policy (NUREG–1600) is to focus the Licensee's attention on the fundamental underlying causes and to reflect that several violations with a common cause may be more significant collectively than individually and may, therefore, warrant a more substantial enforcement action. As stated in the Enforcement Manual, NUREG/BR–0195 at Section 3.5.2, a group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity

[1] During the period January 1, 1978 through September 6, 1983, this requirement was contained in 10 CFR 71.12(b)(1)(ii) and required compliance with applicable requirements in 10 CFR Part 71.

level, thereby representing a Severity Level III problem, if the violations reflect the same underlying cause or programmatic deficiency, or the violations contributed to or were unavoidable consequences of the underlying problem. In this case, the violations are related, and the lack of attention and carelessness toward licensed activities were the underlying causes of the three violations. Therefore, in accordance with the Enforcement Policy, the NRC aggregated the violations into a Severity Level III problem for which a $12,500 civil penalty was assessed.

As to the apportionment of the civil penalty, the violations individually would be characterized at Severity Level IV and, therefore, would not be subject to individual penalties. The regulatory significance of this Severity Level III problem is the collectiveness of the problem. Therefore, the penalty has not been allocated for each violation. Consequently, the civil penalty applies to the problem as a whole.

2. The Licensee argued that none of the violations ''has real safety significance.'' B&W Fuel stated that its safety analysis of the BW–2901 package, which was performed after deviations were found and prior to further use, was more than adequate. B&W Fuel added that the NRC does not have a basis in the regulations for requiring the use of incredible assumptions, such as an optimized volume fraction, in post accident assumptions.

The Licensee contended that the NRC staff's new assumptions imposed during the review of B&W Fuel's submittal under 10 CFR 71.95 make the analysis appear inadequate and that this is not the case. The Licensee stated that it considers some of the required assumptions to be not credible and therefore beyond the requirement of 10 CFR 71.55(b)(1) and (2), and that the NRC ultimately agreed with B&W Fuel's analysis and authorized it to use the containers with the deviations present.

NRC Evaluation

Safety significance, from an enforcement prospective, involves consideration of: (1) actual safety consequence; (2) potential safety consequence; and (3) regulatory significance. Violation A is of concern because of the potential criticality consequence of B&W Fuel's use of shipping packages that were not constructed as required and for which an adequate safety evaluation had not been performed. Violation B is of concern because the violation continued for over two years which demonstrates a lack of management oversight (i.e., B&W Fuel failed to identify the violation, although the cylinders were readily visible during that time). Violation C is of concern because, in each example of the violation, the NRC relied upon inaccurate information submitted by the Licensee to make a regulatory decision.

While the actual safety consequences of the violations fortunately turned out to be minimal in this case, the regulatory concerns are significant due to B&W Fuel's lack of attention to licensed activities. Specifically, the lack of attention to regulated activities was not isolated, but spanned several areas including licensing, transportation, quality assurance, and material control and accountability, and directly resulted in the three violations described in the Notice. Therefore, the NRC concludes that, taken collectively, the violations represent a significant regulatory concern.

The NRC disagrees with the Licensee's statements regarding the adequacy of its safety analysis. When B&W Fuel evaluated the safety significance of the larger containment vessel, the Licensee incorrectly considered the wooden boards (i.e., box) to be structural components that would confine the fissile material under accident conditions. This is not consistent with the safety basis of the package or previous B&W Fuel analyses. The NRC did not, and does not, agree with B&W Fuel's safety assessment dated July 7, 1995. Furthermore, the NRC did not authorize the Licensee to use the BW–2901 shipping packages with the deviations present unless certain conditions were met; specifically, installation of borated aluminum poison plates, or restricting shipments to large size pellets with a stainless steel separator plate. In view of the above, the NRC concludes that the Licensee's safety analysis of the BW–2901 shipping package was inadequate.

3. The Licensee stated that it does not understand why the NRC did not give B&W Fuel credit for its corrective actions or the cost of meeting the requirements imposed by the NRC assumptions in the analysis for the BW–2901 shipping containers. The Licensee argues that it has been very proactive in this case and took action which prevented any reduction in the protection of the public's health and safety. Specifically, when NRC management indicated that it considered that B&W Fuel's action was outside the NRC's interpretation of Part 71, B&W Fuel immediately stopped using the containers and submitted a request for modification of the COC.

The Licensee claimed that, despite its belief it acted entirely in accordance with its approved QAP, B&W Fuel agreed to comply with the NRC position on 10 CFR 71.12(c)(2) and did so voluntarily on July 20, 1995. B&W Fuel stated that it has operated in accordance with NRC's wishes and is not using the provisions of its QAP, which allows the Licensee to use containers with deviations that are shown by analysis to have no safety significance. The Licensee asserted that corrective action was taken to prevent recurrence in 1990 with a re-design of the procedures which govern shipping container manufacture and use, and that these procedures were demonstrated to be effective during the procurement of new Model 51032 containers in 1993. The Licensee, therefore, disagreed with the NRC's statement in the Notice that ''absent NRC action, FCF would have continued to use nonconforming packages without NRC approval and without performing an adequate safety analysis.''

NRC Evaluation

NRC did not give B&W Fuel credit for corrective actions because the NRC had to take action to focus the Licensee's evaluative and corrective process to obtain comprehensive corrective action. Specifically, for Violation A: (1) as noted in Section 2 of this Appendix, B&W Fuel's safety analysis of the BW–2901 shipping package was inadequate; and (2) the Licensee continued to use nonconforming packages after performing its analysis until the NRC staff informed B&W Fuel staff that it was not authorized to do so.

B&W Fuel was initially informed by the NRC staff via telephone on May 24, 1995, as a result of identification of the bolt hole discrepancies, that it was not authorized to use packaging that does not meet the drawings listed in the COC. In the telephone conversation, B&W Fuel was requested to submit revised pages to the safety analysis report to clarify that packages must conform to the drawings specified in the Certificate of Compliance.

By letter dated May 24, 1995, B&W Fuel submitted revised pages for the BW–2901 safety analysis report. The revised acceptance tests included the following statements: ''Containers will be fabricated only in accordance with the designed drawings referenced in the Certificate of Compliance. The approved Quality Assurance Manual will be used to ensure compliance. Any changes in the drawings shall be submitted to NRC for approval.'' Based on this, NRC staff understood that B&W Fuel would not use packaging that deviated from the drawings referenced in the Certificate of Compliance, without prior NRC approval.

Contrary to the communications, and based on its erroneous interpretation of the use of its QAP, B&W Fuel used the BW–2901 packaging that did not conform to the drawings following identification of the inner dimensional discrepancies until July 20, 1995, when the NRC staff reiterated the regulatory requirements to the Licensee. While the NRC acknowledges that B&W Fuel ultimately agreed to stop using the BW–2901 shipping package, the Licensee, absent NRC involvement, would have continued to use the nonconforming packages. Therefore, the NRC concludes that its statement in the Notice was appropriate.

With regard to Violations B, the Licensee did not provide additional corrective actions which were not already considered after the November 21, 1995 predecisional enforcement conference. As stated in the Notice, although the initial corrective actions for Violation B were appropriate, the adequacy of the long term corrective action is yet to be demonstrated. The corrective actions for violation C were adequate.

Therefore, the NRC concludes that, in accordance with Section VI.B.2 of the Enforcement Policy, credit for the Licensee's corrective action is not warranted.

NRC Conclusion

The NRC has concluded that the violations in the Notice were correctly categorized as a Severity Level III problem, and that the Licensee did not provide an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $12,500 should be imposed.

[FR Doc. 96–11606 Filed 5–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio.

The proposed amendment would correct minor technical and administrative errors in the Improved Technical Specifications (ITS) prior to ITS implementation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Eight of the proposed changes are administrative in nature and either correct errors or incorporate into the improved Technical Specifications a change which was approved by the NRC under Amendment 70 for the current Technical Specifications. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The proposed changes to the diesel generator fuel oil day tank minimum volumes provide more stringent requirements for operation of the facility to increase the reliability of the diesel generator fuel oil transfer pump operation. The more stringent requirements continue to ensure that the safety analysis and licensing basis are maintained. The proposed change to Specification 5.7.3 clarifies continuously guarding a high radiation area is an option, not a requirement. The proposed changes have been reviewed and determined to have no affect on accident conditions or assumptions.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above eight of the proposed changes are administrative in nature and do not increase the possibility of any new or different kind of accident. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The proposed changes to the diesel generator fuel oil day tank minimum volumes do not involve installation of new or different equipment nor do they change the methods governing normal plant operations. These changes are also consistent with assumptions made in the safety analysis and licensing basis. Clarifying the controls of high radiation areas will not impact existing or introduce any new accident precursors. The proposed changes do not create the possibility of a new or different kind of accident since they do not affect the reactor coolant pressure boundary or reactivity controls. Consequently, no new failure modes are introduced as a result of the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is unchanged because the proposed administrative changes do not affect any design basis or accident assumptions. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The imposition of more restrictive requirements for the diesel generator fuel oil day tank minimum volumes results from the implementation of the Bases for the Technical Specification Surveillance Requirement. Clarifying the controls of high radiation areas is consistent with ALARA practices.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in preventing startup of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 10, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 26, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 3rd day of May 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–11603 Filed 5–8–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21936; 811–4502]

Pierre Funding Corporation; Notice of Application

May 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Pierre Funding Corporation.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on December 18, 1995, and was amended on April 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 27, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 805 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942–0654, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a New York corporation, registered as a closed-end investment company under the Act by filing with the SEC a notification of registration on Form N–8A on November 26, 1985. On July 25, 1986, applicant filed a registration statement on Form N–5, which became effective in December, 1986. In June, 1987, applicant issued shares of its common stock through a public offering. There has been no other public offering of applicant's securities, and applicant presently does not intend to make any other public offering of its securities. Applicant is licensed and regulated as a Specialized Small Business Investment Company by the United States Small Business Administration (''SBA'') under the Small Business Investment Company Act of 1958 (''SBICA'').

2. Applicant states that there are 22 beneficial holders of its shares. As of November 30, 1995, applicant also had outstanding SBA-guaranteed debentures in an aggregate principal amount of approximately $4.1 million. These Debentures are not convertible into, exchangeable for, or accompanied by, any equity security. Applicant's common stock is not traded on an active market.

3. As of November 30, 1995, applicant had assets aggregating $11,335,023. Of that amount, $10,894,910 is attributable to applicant's loan portfolio, $85,813 is attributable to real estate acquired in foreclosure of delinquent loans, $40,906 is cash, $195,317 is accrued interest, and $118,077 represents the value of other assets. Applicant's liabilities consisted of approximately $4.1 million in SBA debentures, $250,000 in deferred income, and $1.7 million in other liabilities. As of November 30, 1995, shareholders' equity consisted of approximately $5.4 million in paid-in capital.

4. Applicant presently is not a party to any litigation or administrative proceeding.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order. The registration of the investment company ceases to be in effect upon the taking effect of the order.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not presently propose to make a public offering of securities.

3. Rule 3c–3 under the Act provides that, for purposes of section 3(c)(1), the holders of any debt securities offered and sold by a small business investment company licensed under the SBICA shall be deemed to be one person if the securities are (a) not convertible into, exchangeable for, or accompanied by any equity security and (b) guaranteed as to timely payment of principal and interest by the SBA and backed by the full faith and credit of the United States. Applicant believes that the holders of its debentures are considered one person under the provisions of rule 3c–3.

4. Applicant believes that, pursuant to section 3(c)(1), it is no longer an investment company as defined in section 3 because, for purposes of the Act, only 23 persons are beneficial holders of its securities: 22 persons hold its common stock, and one holds debentures. Applicant is not making and does not presently propose to make a public offering of its securities. Accordingly, applicant requests that the SEC issue an order under section 8(f) declaring that it has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11538 Filed 5–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37165; File No. SR–Amex–96–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Hybrid Securities

May 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 26, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Section 107A of the Amex *Company Guide* to conform the Exchange's listing criteria for hybrid securities to those of the New York Stock Exchange (''NYSE'').

The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 1990, the Commission approved the adoption of Section 107 of the Amex *Company Guide* containing guidelines for listing securities that have features common to both equity and debt securities, yet do not fit within the traditional definitions of such securities.[2] Sometimes referred to as ''hybrids,'' these securities can take a variety of forms. For example, the Exchange has listed under Section 107 a zero coupon intermediate term note, which at maturity returns the face amount of the note plus a percentage of the appreciation, if any, in a well known index such as the S&P 500, or a debt security with a relatively high fixed return, but whose value at maturity is linked to the performance of an unrelated common stock.

Section 107A currently specifies the minimum issuer qualifications, the minimum public distribution and aggregate market value of the security and other criteria to assist the Exchange in its case by case review and determination of the suitability of each security prior to its approval for listing.

The Exchange now proposes to conform its listing criteria for hybrid securities to those of the NYSE by eliminating the current requirements of Section 107A that require a certain minimum redemption price and only allow cash settlement of covered instruments if settled in U.S. dollars.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest in that it conforms the Exchange's listing standards for hybrid securities to those of the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] *See* Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from April 26, 1996, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(e)(6) thereunder.[4]

The Commission notes that although it is reasonable for the Exchange to remove the affected provisions as mandatory listing standards,[5] proposals that deviate from these standards might raise novel or significant regulatory issues that would require a proposed rule change to list the product.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–96–15 and should be submitted by May 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11624 Filed 5–8–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(e)(6).

[5] The affected provisions currently prevent the listing of (1) any cash settled product settled in any currency other than U.S. dollars or (2) any product that had a mandatory redemption price of less than three dollars.

[6] *See* Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990) (order approving File-No. SR–Amex–89–29). For example, a stock index-linked note that was payable in a foreign currency would raise important regulatory issues among which might include the need to address appropriate product term and risk disclosure, customer suitability, and settlement procedures. Accordingly, the Commission expects the Amex to consult with it on the need to file a Section 19(b) rule change to list a product with such terms under the Rule 107A listing standards.

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–37163; File No. SR–NASD–96–09]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Interim Reports to Beneficial Owners and the Use of New Technology to Communicate Such Information to Shareholders

May 2, 1996.

On March 13, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The rule change amends Part II of Schedule D to the NASD By-Laws (''Schedule D'') [3] by adding precatory language recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders [4] to shareholders if they

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *NASD Manual*,. Schedules to the By-Laws, Schedule D, Part II (CCH) ¶¶ 1803–06A.

[4] Interim reports are reports that are voluntarily distributed by an issuer as part of its shareholder relations activities and do not include quarterly financial reports required to be filed with the Commission pursuant to Sections 13(a) and 15(d) of the Act, 15 U.S.C. 78m(a), 78*o*(d).

distribute such reports to shareholders of record [5] and encouraging issuers to utilize communications technology to communicate to shareholders in a timely manner.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37010, March 21, 1996) and by publication in the Federal Register (61 FR 13909, March 28, 1996). No comment letters were received. This order approves the proposed rule change.

The rule change approved today adds new Section 1(d) to Part II of Schedule D recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders if they distribute such reports to shareholders of record. The rule change also adds new Section 2(f) of Part II to Schedule D regarding the qualification requirements for issuers of non-Canadian foreign securities and American Depositary Receipts that are included in The Nasdaq Stock Market. Such issuers also are recommended to distribute interim reports to both shareholders of record and beneficial shareholders if they distribute such reports to shareholders of record. The rule change will apply to both the Nasdaq National Market and The Nasdaq SmallCap Market tiers of The Nasdaq Stock Market.

The rule change is the product of a review by various industry groups, including the American Society of Corporate Secretaries and the Securities Industry Association, of listed [6] companies' dissemination of interim earnings reports to shareholders. The industry groups have been attempting to achieve some uniformity among listed companies in the handling of interim earning reports. Presently, some listed companies distribute interim reports to both record and beneficial shareholders, some listed companies send interim reports to shareholders of record only, and some do not send interim reports to any shareholders. The portion of the proposed rule change recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such reports to shareholders of record is consistent with voluntary provisions adopted by the New York Stock Exchange and the American Stock Exchange [7] and, therefore, would provide uniformity among these markets regarding the handling of listed company interim earnings reports.

New Sections 1(d) and 2(f) to Part II of Schedule D also encourage Nasdaq issuers to consider additional technological methods to communicate such information to shareholders in a timely and less costly manner as such technology becomes available. This provision is intended to encourage Nasdaq issuers to utilize new communications technology available to many but not all beneficial shareholders. The NASD stated in its filing that Nasdaq issuers should consider this provision of the rule change as a supplement to the first provision of the proposed rule change recommending that Nasdaq issuers distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such reports to shareholders of record.

The rule change is precatory and does not impose new requirements on issuers. Nasdaq issuers that distribute interim reports to shareholders of record only would not be subject to Nasdaq actions for non-compliance with Nasdaq listing requirements.

The Commission finds that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act. The rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by, among other things, encouraging Nasdaq issuers to distribute interim reports to both shareholders of record and beneficial shareholders to shareholders if they distribute such reports to shareholders of record. This provision of the proposed rule change is consistent with provisions adopted by the New York Stock Exchange and the American Stock Exchange [8] and, therefore, will provide uniformity among these markets regarding the handling of listed company interim earnings reports. The rule change also encourages Nasdaq issuers to consider new technological means to communicate the information contained in their interim reports to shareholders in a timely and less costly manner. These provisions are intended to enhance shareholder communications in The Nasdaq Stock Market.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–96–09 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11536 Filed 5–7–96; 8:45 am]

BILLING CODE 8010–01–M

[5] The substance of this portion of the proposed rule change has been adopted by the New York Stock Exchange and American Stock Exchange. *See* NYSE Company Manual Rule 203.02 and American Stock Exchange Company Guide Section 623.

[6] The securities of Nasdaq issuers are ''included in'' The Nasdaq Stock Market; they are not ''listed on'' the Nasdaq Stock Market. However, for purposes of this filing, the term ''listed'' will apply to Nasdaq, as well as exchange-listed securities.

[7] *See supra* note 5.

[8] *See supra* note 5.

[Release No. 34–37162; File No. SR–NSCC–96–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Establishing Standard Prices for Transfers of Non-Continuous Net Settlement Assets through the Automated Customer Account Transfer Service

May 2, 1996.

On January 5, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to establish standard prices for certain assets transferred through NSCC's Automated Customer Account Transfer (''ACAT'') service. On February 8 and 20, 1996, NSCC filed amendments to the proposed rule change.[2] Notice of the proposal was published on March 6, 1996, in the Federal Register to solicit comments on the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's proposed rule change modifies NSCC's rules to coincide with its practice of establishing systemized, standard default prices based on asset type for assets which are not eligible for NSCC's Continuous Net Settlement (''CNS'') [4] system and which are

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Julie Beyers, Associate Counsel, NSCC, to Christine Sibille, Division of Market Regulation, Commission (February 7 and 15, 1996).

[3] Securities Exchange Act Release No. 36907 (February 29, 1996), 61 FR 8997.

[4] A CNS security is a cleared security eligible for transfer on the books of each qualified securities depository (*e.g.,* The Depository Trust Company, or the Philadelphia Depository Trust Company), and

Continued

submitted by members for transfer through NSCC's ACAT service.[5] Through its ACAT service, NSCC provides an automated and standardized service for the transfer of assets in a customer account from one brokerage firm to another.

When a customer wants to transfer her account to a new broker-dealer (''receiving broker-dealer''), the receiving broker-dealer submits through NSCC a transfer initiation request form to the broker-dealer holding the customer's assets (''delivering broker-dealer''). Within three business days, the delivering broker-dealer must submit to NSCC a list of the customer's assets it holds. The list must include prices assigned to the assets not eligible for CNS. Unless there are discrepancies between the receiving broker-dealer's list of the customer's assets and the delivering broker-dealer's list, transfer of the account generally takes place four business days later.

On settlement date, NSCC automatically debits the delivering broker's settlement account at NSCC with the market value of the assets being transferred through the ACAT service and credits the receiving broker's settlement account with the same amount. The resulting settlement obligations appear on the members' initial settlement statements issued in the afternoon. When the assets which are not CNS eligible assets are delivered through NSCC's envelope delivery service, NSCC credits the delivering broker's settlement account with the value of those assets and debits a corresponding amount from the receiving broker's settlement account. Because assets delivered through NSCC's envelope delivery service must be submitted by 11:30 a.m., the delivering broker's initial settlement statement will reflect both the debit from the initial ACAT request and the corresponding credit from the delivery of assets resulting in no change to such member's overall settlement obligations. If the assets are not delivered, the delivering broker's settlement bank would be debited the assigned value of the assets at the end-of-day settlement. These funds will be credited to the delivering broker when it delivers the customer's assets.

CNS assets submitted for transfer through the ACAT system are systematically priced. Because assets not eligible for CNS (*e.g.*, limited partnerships, mortgaged backed securities, zero coupon bonds, foreign securities, U.S. government and U.S. agency securities, and thinly traded municipal bonds) typically do not have a system price, NSCC must assign an asset value to any such assets submitted for transfer through the ACAT service. NSCC ascribes assets not eligible for CNS a value by using a pricing service.[6] If there is no price available from a pricing service, NSCC assigns a value based on the higher of (i) the price submitted by the delivering broker or (ii) the price indicated by an industry defined default price matrix.[7] The default price matrix employs security category indicators and specifies a default price for each identified security category. For example, domestic stocks are valued at $1.00 per share and domestic corporate bonds and municipal bonds are valued at $85 per $100 principle amount. Once the default value is established, changes by participants are not permitted.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3) (A) and (F).[8] Sections 17A(b)(3) (A) and (F) require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with person engaged in the clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets these standards because establishment of systemized standard default prices for assets not eligible for CNS which are transferred through the ACAT service provides an incentive for broker-dealers holding customer assets to promptly deliver such securities. The proposed rule change also should foster cooperation and coordination between brokerage firms and NSCC by establishing a standard method by which such assets are priced in the ACAT service. This method of pricing should decrease discrepancies with respect to asset valuation and should reduce the delivering broker's exposure from overvaluation of assets and the receiving broker's exposure from undervaluation of assets.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Sections 17A(b)(3) (A) and (F) of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11537 Filed 5–8–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Lanstar Semiconductor, Inc.; Order Directing Suspension of Trading

May 3, 1996.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Lanstar Semiconductor, Inc., a Utah corporation with executive offices in Arlington, Texas, and that questions have been raised regarding the adequacy and accuracy of publicly disseminated information concerning, among other things, unusual market activity and the tradeability of shares.

Therefore, it is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Lanstar Semiconductor, Inc., over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EDT) on May 6, 1996, through 11:59 p.m. (EDT) on May 17, 1996.

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identified as such on a list of such securities at NSCC.

[5] For a complete description of the ACAT service, refer to NSCC Rule 50 and to Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 [File No. SR–NSCC–94–13] (order approving a proposed rule change modifying the ACAT service).

[6] NSCC will use the following pricing services (listed in order of preference). Equities: The New York Stock Exchange, the American Stock Exchange, NASDAQ, Vancouver Stock Exchange, average OTC comparison system price, Interactive Data Financial Times information, previous day's system price, or last available price in system. Bonds: Average Price in the Bond Comparison System for trades compared on T or T+1, average price in the Bond Comparison System for trades compared on T+2, average price in the Bond Comparison System for trades compared on T+3 or older, Interactive Data Financial Times information, previous day's system price, last available price in system, or for municipal bonds only the price obtained from J.J. Kenny S&P if the last available system price is five days old or older.

[7] The default matrix was developed in conjunction with the New York Stock Exchange, the Securities Industry Association Account Transfer Division, and the National Association of Securities Dealers.

[8] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

[9] 17 CFR 200.30-3(a)(12) (1995).

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–11623 Filed 5–8–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2851]

Kentucky; Declaration of Disaster Loan Area

Madison County and the contiguous counties of Clark, Estill, Fayette, Garrard, Jackson, Jessamine, and Rockcastle in the State of Kentucky constitute a disaster area as a result of damages caused by high winds and tornadoes which occurred on April 20, 1996. Applications for loans for physical damage may be filed until the close of business on July 1, 1996 and for economic injury until the close of business on January 30, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury.	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 285112, and for economic injury the number is 883900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 30, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–11610 Filed 5–8–96; 8:45 am]

BILLING CODE 8025–01–P

Portland District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Portland District Advisory Council will hold a public meeting on Thursday, May 30, 1996 from 1:00 p.m. to 4:30 p.m. and Friday, May 31, 1996 from 8:00 a.m. to 12:00 noon at the Newport Shilo Inn, 536 SW Elizabeth, Newport, Oregon to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 222 S.W. Columbia, Suite 500, Portland, OR 97201–6695, (503) 326–5221.

Dated: May 3, 1996.

Bill Combs,

Associate Administrator for Office of Communication and Public Liaison.

[FR Doc. 96–11609 Filed 5–8–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC–96–13]

Commercial Driver's License Program; Temporary Waiver for Trekking International Overland Expedition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: Trekking International requested relief from the requirements of the commercial driver's license(CDL) regulations (49 CFR Part 383) for drivers participating in the Overland Expedition.

The FHWA has decided that it is not contrary to the public interest and will not diminish the safe operation of commercial motor vehicles (CMVs) to grant a waiver from the CDL testing and licensing standards to drivers participating in the Overland Expedition. The effect of this action is to allow four Iveco 330.30 ANW 6x6 trucks being driven by six foreign licensed employees of the petitioner to continue driving their trucks from Rome, Italy to New York City, New York. The approved waiver is temporary and subject to certain conditions.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Motor Carrier Research and Standards, (202) 366–4001, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, HCC–20, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Driver's License (CDL) regulations, issued pursuant to the Commercial Motor Vehicle Safety Act of 1986 (Title XII, Pub. L. 99-570, 100 Stat. 3207) (49 U.S.C. 31301 *et seq.*), are found at 49 CFR Part 383 (1995). Section 383.23 of the regulations sets forth the general rule that no person shall operate a commercial motor vehicle (CMV) unless such person: (1) has taken and passed a knowledge test and, if applicable, a driving test, which meets Federal standards, and (2) possesses a CDL, which is evidence of having passed the required tests. These Federal standards ensure that drivers of a CMV: (1) have a single driver's license and a single driving record, (2) are tested for the knowledge and skills needed to drive a vehicle representative of the vehicle that they will be licensed to drive, and (3) are disqualified from driving a CMV when convicted of certain criminal or traffic violations.

The term ''commercial motor vehicle'' is defined to include, a motor vehicle:

(1) With a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or

(2) With a GVWR of 26,001 or more pounds; or

(3) Designed to transport 16 or more passengers, including the driver; or

(4) Used in the transportation of quantities of hazardous materials which require the vehicle to be placarded under the Hazardous Materials Transportation Regulations (49 CFR part 172, subpart F). 49 CFR 383.5 (1995).

CDL Waivers

Section 12012 of the Commercial Motor Vehicle Safety Act of 1985 (the Act) authorizes the Secretary of Transportation to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations if the Secretary determines that the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. The regulatory procedures governing the issuance of waivers are found at 49 CFR 383.7 (1995).

Petition

Trekking International of Milan, Italy, through its North American coordinator, Circumpolar Expeditions of Anchorage, Alaska, has petitioned the FHWA to grant a CDL waiver to drivers involved

in the Overland Expedition. The goal of the Overland Expedition is to drive four (4) Iveco 330.30 ANW 6x6 trucks 15,000 miles from Rome, Italy, to New York City, New York. Once the Expedition is completed, the trucks will be shipped back to Italy. The petitioner expects the vehicles to be shipped on or before June 1, 1996.

Docket Comments

In response to the notice published in the Federal Register on March 29, 1996 (62 FR 14193), the FHWA received two responses to the docket.

The Tennessee Public Service Commission (TPSC) wrote in support of granting the waiver. The TPSC stated that ''[b]ased upon the notice in the Federal Register, I can find no substantive reason to believe that the issuance of a CDL waiver will cause any risk to the motoring public given the familiarity of the drivers with the vehicles and the drivers holding international commercial driver licenses.''

The other commenter, Advocates for Highway and Auto Safety (AHAS), wrote in opposition to granting the waiver. The AHAS stated that evidence was not presented to indicate that the waiver is in the public interest. They further stated that unlike other waivers that have been granted, this waiver does not encourage employment in the United States (U.S.) for drivers who would otherwise be unable to continue driving.

In regard to safety, AHAS stated that the FHWA did not substantiate that the waiver will not diminish safety. They further stated that the notice does not provide specific information on the driving experience, competence and safety record of these drivers; any indication that the drivers are familiar with our roadways; any comparative analysis of the differences between Italian and U.S. commercial vehicle safety laws and regulations; and any justification for not hiring U.S. drivers with valid CDLs to operate the vehicles in the U.S.

The AHAS also asserts that the period for public comment violated the Administrative Procedure Act because at least 15 days were not provided. The AHAS stated that the FHWA did not offer an explanation as to why there was a delay in publishing the notice and did not justify the reason for the short comment period. If the waiver is granted, the AHAS also stated that it should be limited to the time period actually needed and requested.

FHWA Response to the Comments

The FHWA has determined that it would not diminish the safe operation of CMVs to waive drivers of Trekking International of Milan, Italy involved in the Overland Expedition, from the CDL requirements, subject to certain conditions. The requested waiver would be temporary and only be applicable to those foreign employees driving the four vehicles that are participating in the Expedition. These employees are professional operators of commercial motor vehicles. They have valid Italian commercial driver's licenses to operate vehicles in 5 vehicle classes. The Italian licensing process includes knowledge and skills testing based on the recommendations of the European Community, where there is a 21 years of age requirement to operate heavy trucks. Each of the drivers have 15 to 20 years of driving experience.

In response to the AHAS concern about the FHWA not conducting a comparative analysis between the Italian and U.S. CMV safety laws and regulations, there was only a need to compare the licensing requirements since Trekking International has agreed to comply with all other applicable Federal Motor Carrier Safety Regulations (FMCSRs), including financial responsibility, vehicle marking, driver physical qualification, vehicle inspection, and hours of service requirements. In addition, since this waiver is limited to the six drivers named in the petition and is not a reciprocal agreement with the Italian government on commercial driver licensing, a comprehensive analysis of all safety laws and regulations was not warranted. The FHWA did, however, obtain documentation of Italian CMV driver licensing requirements to ensure these drivers met licensing standards similar to U.S. CMV drivers.

The FHWA has further determined that it is not contrary to the public interest to grant this waiver. While AHAS claims there is no public interest in granting the waiver, it does not offer any substantial reasons why the granting of the waiver would be contrary to the public interest. The FHWA agrees with AHAS that U.S. drivers with valid CDLs could be hired to operate these vehicles in the U.S., but that was not what was requested in the petition. Based on the fact that these are European vehicles, it is in the public interest to allow these Italian drivers who are very familiar with operating these vehicles and have over 15,000 miles of experience driving them in this expedition, in all kinds of road and weather conditions, across Europe and Asia before entering the U.S., to continue driving them in the U.S. to complete the trip.

AHAS has objected to the short comment period provided in the FHWA's March 29 notice, asserting that a 10-day comment period violates the Administrative Procedure Act. The Administrative Procedure Act does not specify a minimum period for comment; nor does 49 U.S.C. 31135 which authorizes the agency to waive its regulations after notice and opportunity for comment. While the FHWA typically provides more time for public comment on proposals similar to his one, the standard for determining how much time should be provided for public comment is what is reasonable in view of the facts.

In this instance, the FHWA believes that ten days is reasonable. While the original petition for waiver was submitted on January 24, 1996, the FHWA required the petitioner to submit further information in support of its petition before deciding whether the petition warranted further consideration. The further information submitted by the petitioner is summarized in the notice published on March 29.

The FHWA believes that the ten-day comment period in this case was adequate to alert interested parties to respond to the request for waiver, and that the notice provided adequate information to enable interested parties, such as AHAS, to respond to the notice. To further delay acting on this petition would make it impossible for the petitioner to do what it plans, or would increase its costs, without creating a public benefit.

AHAS also objected to the waiver being granted for a longer period than is actually needed or requested. The FHWA does not agree with this objection. While the petitioner expects to complete the trip to New York by the end of April, the FHWA believes that granting an additional month to provide for weather, vehicle repair, or other unforseen delays is a reasonable action.

Waiver Conditions

The waiver from the CDL requirements is granted, subject to the following conditions:

(1) Drivers covered—this waiver applies only to the following Italian drivers employed by the petitioner while participating in the Overland Expedition and holding a valid Italian commercial driver's license to operate the vehicles listed in condition #3:

Name	License No.	Issued	Classification
Gregorio Camevale	1300267	8/7/95	ABCDE
Carlo Marocco	1291175	9/4/95	ABCDE
Erhard Mayer	A26995	8/28/95	ABCDE
Vicenzo Leone	1291174	9/11/95	ABCDE
Emilio Altamore	1247556	9/4/95	ABCDE
Francesco Miranda	1247557	9/4/95	ABCDE

(2) Duration—the waiver is only valid through June 1, 1996;

(3) Vehicles—the waiver is limited to the operation of the four vehicles participating in the Overland Expedition and identified with the following vehicle identification numbers and license plates:

a. WJMH3GMSM09015805 (plate no. A658095)
b. WJMH3GMSM09015766 (plate no. A658096)
c. WJMH3GMSM09015814 (plate no. A658097)
d. WJMH3GMSM09015669 (plate no. A658098)

(4) Compliance with FMCSRs—drivers covered by the waiver are required to comply with other applicable requirements of the Federal Motor Carrier Safety Regulations, including financial responsibility, vehicle marking, driver physical qualification, vehicle inspection, and hours of service requirements.

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207; 49 U.S.C. 31301 *et seq.*; 49 U.S.C. 31315; 49 CFR 1.48; 49 CFR 383.7; 23 U.S.C. 315.

Issued on: April 30, 1996.

Rodney E. Slater,

Federal Highway Administration.

[FR Doc. 96–11372 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–22–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	7/01/1996
10664–N	EFIC Corporation, San Jose, CA	3, 4	6/30/1996
10740–N	CSXT/BIDS, Philadelphia, PA	4	6/01/1996
10915–N	Luxfer USA Limited, Riverside, CA	3, 4	6/30/1996
10945–N	Structural Composites Industries, Pomona, CA	3, 4	6/30/1996
10997–N	HR Textron, Inc. Pacoima, CA	3, 4	6/30/1996
11085–N	Union Tank Car Company, East Chicago, IN		
11098–N	Alcan Smelters and Chemicals Ltd., Montreal, CN	3	6/15/1996
11157–N	Northwest Ohio Towing & Recovery, Beaverdam, OH	1, 4	5/30/1996
11193–N	U.S. Department of Defense, Falls Church, VA	4	6/30/1996
11194–N	Pressure Technology, Inc., Hanover, MD	3, 4	6/30/1996
11249–N	UOP, Shreveport, LA	4	6/15/1996
11302–N	Stolt Tank Containers Limited, Hull, North Humberside, EN	1	5/31/1996
11307–N	Jacx Enterprises, Highlands, TX	4	6/15/1996
11315–N	Southern Pacific Lines, Houston, TX	4	6/15/1996
11322–N	Hydra Rig, Inc., Ft. Worth, TX	1	5/31/1996
11375–N	Oceaneering Space Systems, Houston, TX	1, 4	6/30/1996
11396–N	Laidlaw Environmental Services, LaPorte, TX	4	6/30/1996
11401–N	Hewlett Packard Co., Santa Clara, CA	4	6/30/1996
11409–N	Pure Solve, Inc., Irving, TX	4	5/31/1996
11411–N	National Propane Gas Association, Arlington, VA	4	6/30/1996
11413–N	Dow Chemical, NA, Midland, MI	4	7/15/1996
11424–N	Midwest Corporate Air, Inc., Bellefontaine, OH	4	6/15/1996
11426–N	Laidlaw Environmental Services, LaPorte, TX	4	5/15/1996
11427–N	Georgia Gulf Corp., Palquemine, LA	4	7/15/1996
11442–N	Union Tank Car Co., East Chicago, IN	4	6/30/1996
11443–N	Hercules Inc., Wilmington, DE	4	6/30/1996
11450–N	Coast Gas Inc., Bakersfield, CA	1	5/31/1996
11465–N	Monsanto, Co., St. Louis, MO	4	6/30/1996
11470–N	North East Chemical Corp., Cleveland, OH	4	6/30/1996
11487–N	Whittaker Electronic Systems, Simi Valley, CA	4	5/31/1996
11491–N	P.M. Industrial Gas Ltd., Georgetown	1	5/31/1996
11503–N	The American Waterways Operators, Seattle, WA	4	6/30/1996
11505–N	Manchester Tank, Brentwood, TN	4	6/30/1996
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	6/30/1996
11522–N	The American Waterways Operators, Seattle, WA	1, 4	6/30/1996
11523–N	Bio-Lab, Inc., Conyers, GA	4	5/31/1996
11526–N	BOC Gases, Murray Hill, NJ	1, 4	7/31/1996
11527–N	Technical Service Co., Long Beach, CA	4	7/31/1996
11529–N	Matheson Gas Products, Secaucus, NJ	4	7/31/1996
11530–N	Department of Energy, Washington, DC	4	5/24/1996
11531–N	Grand Aire Express, Inc., Monroe, MI	4	5/31/1996
11537–N	Babson Bros. Co., Romeoville, IL	4	7/31/1996
11538–N	Process Engineering, Plaistow, NH	4	5/31/1996
11540–N	Convenience Products, Fenton, MO	4	7/01/1996
11541–N	Kaiser Compositek Brea, CA	3, 4	6/30/1996
11542–N	Sunrise Supply Enterprises, Ltd., Albuquerque, NM	4	5/30/1996
11546–N	Trinity River Authority of Texas, Grand Prairie, TX	4	6/30/1996

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	4	5/31/1996
6922–M	Halocarbon Products Corp., N. Augusta, SC	1, 4	5/31/1996
7835–M	BOC Gases, Murray Hill, NH	4	6/30/1996
8131–M	NASA, Washington, DC	4	6/30/1996
9001–M	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, EN	4	5/31/1996
9164–M	Fabricated Metals, Inc., San Leandro, CA	4	6/30/1996
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	6/30/1996
9909–M	Taylor-Wharton, Harrisburg, PA	4	6/30/1996
10094–M	Air Products & Chemicals, Inc., Allentown, PA	4	7/20/1996
10997–M	HR Textron Inc., Pacoima, CA	3, 4	6/30/1996
11055–M	Rollis Chempak Inc., Wilmington, DE	4	6/30/1996
11321–M	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	4	5/31/1996

PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION

Application No.	Applicant	Reason for delay	Estimated date of completion
10288–PM	Chevron Chemical Company, Houston, TX	.....	.....
11249–PM	Ashland Chemical Company, Columbus, OH	4	7/01/1996

Meaning of Application Number Suffixes
N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on May 3, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–11608 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board [1]

[STB Finance Docket No. 32931]

CSX Transportation, Inc.—Trackage Rights Exemption—East Cooper and Berkeley Railroad Company

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from East Cooper and Berkeley Railroad (ECBR) between milepost 0.00 at State Junction, SC, to milepost 14.8 thence over newly constructed trackage [2] for a distance of approximately 2.2 miles to the property line of Nucor Corporation (Nucor), for a total distance of approximately 17 miles in Berkeley County, SC.

The trackage rights became effective on May 2, 1996.

The notice states that the CSXT's use of the ECBR track will enable CSXT to provide direct linehaul service to Nucor and any satellite industries that might be constructed adjacent to the Nucor mill. This direct access will enable CSXT to offer intermodal competition for shipments to and from the Nucor mill and any satellite industries.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any pleadings must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: John W. Humes, Jr., Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: May 3, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11621 Filed 5–8–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32906]

San Joaquin Valley Railroad Co.—Corporate Family Transaction Exemption—Port Railroads, Inc.

San Joaquin Valley Railroad Co. (SJVR) and Port Railroads, Inc. (PRI), common carriers by railroad,[2] have jointly filed a verified notice of exemption whereby SJVR will acquire by assignment of lease [3] all of the railroad properties which PRI acquired by lease from Southern Pacific.[4]

The transaction was expected to be consummated on April 24, 1996.

The unification of SJVR and PRI's railroad operations will permit the consolidation of their separately maintained books and records, the elimination of duplicating administrative costs and the achievement otherwise of greater efficiencies and economies in the rendition of the railroads' transportation services.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in significant changes in railroad operations. In addition, while the parties do not specifically say it, the transaction would apparently not result in a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32906, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] *See East Cooper and Berkeley Railroad—Construction and Operation Exemption—in Berkeley County, SC,* Finance Docket No. 32704, (ICC served Dec. 13, 1995).

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] SJVR and PRI are Class III railroads which are wholly owned subsidiary corporations of Kyle Railways, Inc.

[3] Notice of PRI's lease and operation exemption of these lines was given in *Port Railroads, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company,* Finance Docket No. 32457, (ICC served Mar. 14, 1994).

[4] SJVR and PRI state at p. 1 of their Assignment of Lease Agreement that ''such assignment requires the consent of Southern Pacific.''

Decided: May 3, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11622 Filed 5–8–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 30, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Foreign Assets Control

OMB Number: 1505–0156.

Form Number: None.

Type of Review: Extension.

Title: Terrorism Sanctions Regulations.

Description: The President issued Executive Order 12947, declaring a national emergency with respect to ''grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process.'' The Executive Order invoked the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), and requires the promulgation of regulations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–11564 Filed 5–8–96; 8:45 am]

BILLING CODE 4810–25–P

Submission for OMB review; comment request

May 2, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0062.

Form Number: CF 1301.

Type of Review: Extension.

Title: General Declaration.

Description: The form is used to record necessary information for the identification of vessels arriving from foreign ports into the United States. It also serves to record a vessel's itinerary and provides a detail description of a vessel's cargo and other manifest information. The information recorded is used for national statistics by the Bureau of the Census and other agencies.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (each transaction).

Estimated Total Reporting Burden: 17,326 hours.

OMB Number: 1515–0145.

Form Number: None.

Type of Review: Extension.

Title: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal.

Description: This information is used in a voluntary program to receive internationally recognized Customs certification that intermodal Containers/Road Vehicles meet construction requirements of international Customs conventions. Such certification facilitates international trade by reducing intermediate international controls.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,124 hours.

OMB Number: 1515–0186.

Form Number: None.

Type of Review: Extension.

Title: Air Waybill.

Description: Use of an Air Waybill in lieu of a Customs form to report arrival of freight and transportation in-bond of freight to the port of destination.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 60.

Estimated Burden Hours Per Recordkeeper: 2 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1,030 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426 U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–11565 Filed 5–8–96; 8:45 am]

BILLING CODE 4820–02–U

Submission for OMB Review; Comment Request

April 24, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below by the May 1996 start-up date, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this

information collection by May 1, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: PC:V 96–016–G.

Type of Review: Revision.

Title: 1. Tax Forms and Publications 1996 1040 Forms and Condensed Instructions Focus Group Interviews; and 2. Tax Filing Behavior Focus Group Interviews.

Description: 1. The Internal Revenue Service's Tax Forms and Publications Division has developed a new experimental version of the line-by-line instructions for Form 1040, *U.S. Individual Income Tax Return.* The draft instructions are about 25% shorter than the current instructions, but contain all the information needed by most taxpayers whose tax situation remains fairly stable from year to year. IRS will use this series of focus groups to obtain reactions, comments and suggestions to these new instructions from Form 1040 filers who prepare their own returns.

2. The Internal Revenue Service (IRS) recently found that there is a significant increase in the usage of return preparation software within the professional accounting community. The IRS is interested in exploring if similar changes are occurring in individual taxpayer filing behavior and patterns. IRS will conduct this series of focus groups to obtain feedback from these taxpayers on (a) current filing practices, (b) changes to filing practices over the past few years, and (c) future filing practices. Information gathered in these focus groups will help IRS adapt their products and services to meet taxpayers changing needs.

Respondents: Individuals or households

Estimated Number of Respondents: 180

Estimated Burden Hours Per Respondent:

Screening participants—54 hours each.

Interview sessions plus travel—270 hours each.

Frequency of Response: Other.

Estimated Total Reporting Burden: 648 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–11566 Filed 5–8–96; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 822]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of Title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the Federal Register a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code. Accordingly, the following is the 1996 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the Federal Register and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated April 15, 1995, (FR) and will be effective as of the date of publication in the Federal Register.

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate explosive mixtures.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
Bulk salutes.
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.

DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen (RDX).
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-l,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX (2,6-bis(picrylamino))-3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-l,3,5,-timethylene-2,4,6,-trinitramine; hexahydro-l,3,5-trinitro-S-triazine].

S

Safety fuse.
Salutes, (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.

Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Linda Deel, Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8310).

Approved: April 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–11613 Filed 5–8–96; 8:45 am]

BILLING CODE 4810–31–P]

Internal Revenue Service

Proposed Collection; Comment Request for Form 3975

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3975, Tax Practitioner Annual Mailing List Application and Order Blank.

DATES: Written comments should be received on or before July 8, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 3975, Tax Practitioner Annual Mailing Application and Order Blank.

OMB Number: 1545–0351.

Form Number: Form 3975.

Abstract: Form 3975 allows a tax practitioner a systematic way to remain on the Tax Practitioner Mailing File and to order copies of tax materials.

Current Actions: Form 3975A was obsoleted because it was a duplication of items that could be ordered using Form 3975.

Type of Review: Revision.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 320,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 16,000 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: May 3, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–11638 Filed 5–8–96; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 61, No. 91
Thursday, May 9, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

8 CFR Parts 3 and 242

[EOIR No. 102F; AG Order No. 2020–96]
RIN 1125–AA01

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

Correction

Editorial Note: This correction replaces the document published at 61 FR 19976, May 3, 1996. An additional correction to this document appears elsewhere in the Rules Section of this issue.

In rule document 96–10157 beginning on page 18900 in the issue of Monday, April 29, 1996, make the following corrections:

§ 3.23 [Corrected]

1. On page 18908, in the first column, in § 3.23(b)(3), the first sentence should read ''A motion to reconsider must be filed within 30 days after the date on which the decision for which reconsideration is being sought was rendered, or on or before July 31, 1996, whichever is later.''.

§ 3.31 [Corrected]

2. On the same page, in the third column, in § 3.31(b), in the sixth line, ''§ 3.8(a)(c)'' should read ''§ 3.8(a) and (c)''.

§ 242.19 [Corrected]

3. On page 18909, in the third column, in § 242.19, in amendatory instruction 24, in the fourth line, ''(6)'' should read ''(b)''.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-060]
RIN 1218-AA71

Personal Protective Equipment for General Industry

Correction

In rule document 96–10433 beginning on page 19547 in the issue of Thursday, May 2, 1996, make the following correction:

§ 1910.136 [Corrected]

On page 19548, in the third column, in the amendatory instruction to § 1910.136(a), in the second line from the top, ''used'' should read ''uses''.

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

Correction

In rule document 95–20141 beginning on page 42037 in the issue of Tuesday, August 15, 1995, make the following correction:

Appendix B to Part 2619 [Corrected]

On page 42039, in Appendix B to Part 2619, the table at the top of the page should read ''Table II''.

BILLING CODE 1505–01–D

Federal Register

Thursday
May 9, 1996

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Inviting Applications for New Awards for Fiscal Year 1996, and Final Priorities; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: DOE.

ACTION: Notice inviting applications for new awards for fiscal year 1996.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1996 competitions under two programs authorized by the Individuals with Disabilities Education Act.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement. [CFDA No. 84.029A]

Training Personnel for the Education of Individuals With Disabilities Program

Purpose of Program: The purpose of Training Personnel for the Education of Individuals with Disabilities Program—Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children and youth with disabilities.

Eligible Applicants: Eligible applicants are institutions of higher education, and appropriate nonprofit agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 318.

Priority

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, Children, and Youth With Low-Incidence Disabilities (84.029A)

The priority for Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, Children, and Youth with Low-Incidence Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: May 10, 1996.

Deadline for Transmittal of Applications: June 19, 1996.

Deadline for Intergovernmental Review: August 19, 1996.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 47.

Estimated Range of Awards: $100,000 to $200,000.

Project Period: Up to 36 months.

Available Funds: In fiscal year 1996, approximately $7,000,000 will be available to support an estimated 47 projects (grant awards) under this absolute priority (competition) for the first 12 months (year) of the projects. The total average award is estimated at approximately $150,000. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level, and funds are available.

For Applications and General Information Contact: Ernestine Jefferson, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3072, Washington, DC 20202–2651. Telephone: (202) 205–8761. FAX: (202) 205–9070. Internet: Ernestine__Jefferson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Applications are available in alternative formats upon request.

For Technical Information Contact: Verna Hart, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3519, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5392. FAX: (202) 205–9070. Internet: Verna__Hart@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–7381.

Program Authority: 20 U.S.C. 1431.

[CFDA No. 84.237T]

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other appropriate public and nonprofit private institutions or agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 328.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Center To Promote Collaboration and Communication of Effective Practices for Children With, or At Risk of Developing, Serious Emotional Disturbance (SED) (84.237T)

The priority Center to Promote Collaboration and Communication of Effective Practices for Children with, or At Risk of Developing, Serious Emotional Disturbance (SED) in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: May 10, 1996.

Deadline for Transmittal of Applications: June 19, 1996.

Deadline for Intergovernmental Review: August 19, 1996.

Estimated Average Size of Award: $500,000.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Available Funds: In fiscal year 1996, approximately $500,000 will be available to support one project (award) for the first 12 months (year) of the project. It is anticipated that the project will be level funded in years two through five, unless there are increases in costs attributable to significant changes in activity level, and funds are available.

For Applications and General Information Contact: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 20508105. Internet: Claudette__Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Applications are available in alternative formats upon request.

For Technical Information Contact: Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet: Tom__Hanley@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Note: The Department of Education is not bound by any estimates in this notice.

Information about the Department's funding opportunities, including copies of application notices for discretionary

grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1426.

Dated: May 3, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–11472 Filed 5–8–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities for two programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on June 10, 1996.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific final priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains three final priorities under two programs authorized by the Individuals with Disabilities Education Act, as follows: Training Personnel for the Education of Individuals with Disabilities Program (two final priorities); and the Program for Children and Youth with Serious Emotional Disturbance (one final priority). The purpose of each program is stated separately under the title of that program.

On February 21, 1996, the Secretary published a notice of proposed priorities for these programs in the Federal Register (61 FR 6754–6758).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, fifty-six parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, Children, and Youth With Low-Incidence Disabilities

Comment: Forty-two commenters expressed concern about the severe shortage of personnel specifically prepared to work with children and youth who are deaf-blind. The commenters felt that the priority should place more emphasis on preparing personnel to work with children and youth with deaf-blindness by specifically identifying deaf-blindness as a low-incidence disability. Identification of deaf-blindness, the commenters note, is necessary to preserve the uniqueness of this disability and to address the lack of qualified personnel who have the specialized skills to effectively work with deaf-blind children.

Discussion: The proposed priority defined the term ''low-incidence disability'' to include a ''visual or hearing impairment, or simultaneous visual and hearing impairments.'' The proposed definition did not specifically identify deaf-blindness as a low incidence disability, although deaf-blindness clearly satisfies the definition. The Secretary agrees with the commenters that there is a need to train additional personnel to work with the deaf-blind and notes that the Office of Special Education Programs currently funds seven programs that prepare personnel to work with this population. Projects proposing to prepare special education, related service, and early intervention personnel to work with children who are deaf-blind are eligible to receive an award under the final priority and are encouraged to apply.

Changes: The proposed priority has been amended to clarify that children with deaf-blindness would be considered individuals with ''low-incidence'' disabilities.

Comment: Four commenters expressed concern that there is a shortage of teachers of blind and visually impaired children. The commenters recommended that the Department establish a separate priority for the training of personnel to work with blind and visually impaired children since training programs for teachers of the visually impaired are highly specialized and rigorous.

Discussion: The Secretary agrees that there is a shortage of teachers of the visually impaired and blind. The Secretary emphasizes that the final priority, like the proposed priority, authorizes funding of projects designed to train teachers to work with the blind and visually impaired.

Changes: None.

Comment: Five commenters questioned the collaborative, multi-disciplinary aspects of the priority. Two commenters expressed concern that the priority required projects to demonstrate collaboration between their project and other departments and suggested that such collaboration is beyond the capability of most programs. In particular, one commenter stated that the complexity and intensity of training programs that prepare individuals to work with the visually impaired would make collaboration between these and other programs (e.g., nursing, physical therapy, occupational therapy, and psychology) impossible. Other commenters mentioned the difficulty of an over-crowded curriculum and a lack of time and personnel as additional reasons for opposing the development of collaboration among programs. However, one commenter recommended that projects demonstrate partnerships with rehabilitation programs, independent living centers, employers, and other community resources that become critical as youth with low-incidence disabilities transition to employment.

Discussion: The priority encourages, but does not require, collaboration

among several institutions and between training institutions and public schools. The priority also encourages, but does not require, projects that foster successful coordination between special education and regular education professional development programs in order to address the needs of children with low-incidence disabilities in inclusive settings. The Secretary is sympathetic to the level and diversity of knowledge needed to work with many of the low-incidence populations. However, students with low-incidence disabilities may experience multiple problems that need to be addressed through services in several disciplines (e.g., occupational, physical and speech therapy, social work, psychology). Special education, related service, and early intervention personnel that work with low-incidence populations, therefore, must possess sufficient knowledge of other disciplines to communicate with professionals in those areas, to function as a team member when assessing the students, and to cooperate knowledgeably when developing individualized education plans (IEPs). Multi-disciplinary training projects are encouraged for purposes of assisting students with low-incidence disabilities in reaching their maximum potential. Personnel trained under the priority, however, are not expected to become fully knowledgeable in other disciplines.

The Secretary realizes that the appropriateness of any collaboration and coordination is dependent upon the objectives of a particular project. Potential variation among projects is the reason that the collaboration and coordination is encouraged, not required.

Changes: None.

Comment: Some commenters requested that certain occupations be identified in the priority as types of careers to which training projects could be directed. Commenters suggested that transition staff, direct care professionals, case managers, orientation and mobility instructors, interveners and paraprofessionals be specifically mentioned in the priority.

Discussion: The priority provides support for related services personnel who provide developmental, corrective, and other supportive services that assist children with low-incidence disabilities to benefit from special education. Transition staff, direct care professionals, case managers, orientation and mobility instructors, interveners and paraprofessionals are considered related service personnel under the priority. Because the population of individuals with low-incidence disabilities requires multiple services, it would be difficult to provide an exhaustive list of all types of related service personnel that can be trained under this priority. Also, any list of related service personnel could be viewed as overly prescriptive. The Secretary prefers to allow individual projects the latitude to propose and justify their particular project concentration.

Changes: None.

Comment: One commenter requested clarification of the language in the priority that authorizes training of related service personnel through ''comprehensive programs'' or ''specialty components of programs that emphasize children with low-incidence disabilities within a broader discipline.''

Discussion: Comprehensive programs are those that are dedicated to the total area of preparation. Examples include, but are not limited to, programs that prepare psychologists to work with school-age children with disabilities, or physical therapy programs that prepare therapists to function within school settings. A specialty component of a program is a segment of a broader program devoted to a low-incidence disability. Examples include, but are not limited to, programs that prepare school psychologists to work with children who have traumatic brain injury or physical therapists to work with children birth to age three. Both types of preparation programs may be supported under this priority. The Secretary intends to include this clarifying information in the application package for the competition.

Changes: None.

Comment: One commenter described the potential difficulty in using the State Comprehensive System of Personnel Development (CSPD) to substantiate a State's need for trained personnel to serve children with low-incidence disabilities and asked if other means might be used to document State needs.

Discussion: The Secretary believes that the CSPD should be used to support the need for qualified personnel. However, the Secretary also recognizes that projects may have to supplement, where appropriate, information provided in a particular State's CSPD. In the past, if a State's CSPD did not support its need for qualified personnel, other sources of data have been accepted for purposes of documenting need. The Secretary agrees that applicants should continue to have the option to use documentation in addition to the CSPD to demonstrate the lack of qualified personnel in a particular State. Regardless of the documentation used, it remains the responsibility of the applicant to describe, support, and justify the personnel needs addressed by a particular project.

Changes: The priority has been amended to allow projects to use documentation in addition to the CSPD to show how their proposed activities address the need for trained personnel in a particular State.

Comment: One commenter asked that the priority emphasize the need to train males for careers in special education in light of the shortage of males who pursue such training.

Discussion: The Secretary recognizes that the majority of personnel serving the needs of children and youth with low-incidence disabilities are female. However, the general shortage of qualified personnel able to serve the low-incidence population justifies the need for preparing all potential candidates, both male and female.

Changes: None.

Comment: Two commenters questioned the approximate percentages of available funds to be awarded to the three components in the priority—55 percent for careers in special education, 30 percent for careers in related services, and 15 percent for careers in early intervention. One commenter sought a decrease in the percentage of funds allocated to the preparation of special educators, while another commenter recommended decreasing the percentage of funds reserved for special education and related services training projects in order to support a separate allocation for preparation of individuals who work with the visually impaired.

Discussion: The priority combines elements of three previous competitions that were funded separately and are now being combined to target the needs of the low-incidence population. The percentages in the priority are approximates and have been developed in consideration of past levels of support for the different competitions. Funding of particular projects depends on the availability of funds, the quality of the applications received, and the results of the peer review process. However, the Secretary notes that the amount of proposed funding for this competition currently surpasses the total amount of past awards for the three separate competitions.

Changes: None.

Comment: One commenter requested the priority be limited to special education personnel and specifically questioned the appropriatness of related service and early intervention specialists to work with the low-incidence population. The commenter asserted that narrowly prepared related

service personnel may not find employment because children with low-incidence disabilities are often widely dispersed among geographical locations. As a result, such programs may experience logistical difficulties and may be uneconomical.

Discussion: The Secretary is aware of the logistical and economic difficulties associated with serving infants, toddlers, children and youth with low-incidence disabilities in rural and isolated areas, as well as in public school settings. The Secretary is also aware of many instances in which several children with low-incidence disabilities are educated within a single location. Regardless of setting, however, special educators, related service and early intervention personnel must be prepared appropriately to meet the needs of children with low-incidence disabilities. The Secretary encourages programs preparing personnel to include information and experience with low-incidence disabilities so that graduates of their programs are able to serve their customers in their areas of expertise no matter where they are found, as single students in an isolated setting or as one of a group found in aggregate settings. Federal support of these programs is intended to reduce the need for special educators, related service and early intervention personnel to learn on the job, which could otherwise be detrimental to students.

Change: None.

Priority—Center To Promote Collaboration and Communication of Effective Practices for Children With, or At Risk of Developing, Serious Emotional Disturbance (SED)

Comment: One commenter wrote that the allocation of funds under this priority would be more effective if provided directly to States with flexibility on how these funds are used. The commenter felt this would allow each State to address issues relating to the education of students with emotional disabilities specific to the needs of that State as identified by school districts and other agencies.

Discussion: One of the purposes of the Program for Children and Youth with Serious Emotional Disturbance is, ''To provide information and training for those involved with, or who could be involved with children and youth with serious emotional disturbance'' (34 CFR 328.1(b)(2)). The proposed Center is targeted toward the information aspect of this purpose as stated in the program regulations. There are other purposes of the Program, and some of those are also targeted by the priority, but to a lesser extent.

Given the limited resources, the Department believes that it would be most efficient, and have the greatest impact, to concentrate the funds rather than to distribute the resources in significantly smaller portions to the States. Particularly, the Secretary feels that in the area of information development and transfer, multiple smaller efforts by the States would generate more duplication and redundancy, and would have less overall impact and efficiency than one Center.

Changes: None.

Training Personnel for the Education of Individuals With Disabilities Program

Purpose of Program: The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary will fund under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, Children, and Youth with Low-Incidence Disabilities

Background

The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, children and youth with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States are reluctant to support the needed professional development programs. Of the programs that are available, not all are producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

The term ''low-incidence disability'' means a visual or hearing impairment, or simultaneous visual and hearing impairments (including deaf-blindness), significant mental retardation, or an impairment such as severe and multiple disabilities, severe orthopedic disabilities, autism, and traumatic brain injury, for which a small number of highly skilled and knowledgeable personnel are needed.

Applicants may propose to prepare one or more of the following types of personnel:

(1) Special educators including early childhood, speech and language, adapted physical education, and assistive technology personnel;

(2) Related services personnel who provide developmental, corrective, and other supportive services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs and specialty components within a broader discipline that prepares personnel for work with the low-incidence population may be supported; or,

(3) Early intervention personnel who serve children birth through age 2 with disabilities and their families. Early intervention personnel include persons prepared to provide training for, or be consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and include collaboration among several institutions and between training institutions and public schools. In addition, projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Projects must:

(a) Show how their proposed activities address the demands for trained personnel to serve children with low-incidence disabilities in the State or States whose needs the project is expected to meet. The extent of the need for trained personnel in a particular State must be supported by the State's Comprehensive System of Personnel Development (CSPD), or the CSPD supplemented by other additional relevant sources which the applicant demonstrates to be reliable and accurate.

(b) Prepare personnel to address the specialized needs of children with low-

incidence disabilities from different cultural and language backgrounds;

(c) Incorporate best practices in the design of the program and the curricula;

(d) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(e) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(f) Develop linkages with Education Department technical assistance providers to communicate information on program models used and program effectiveness.

Under this absolute priority, the Secretary plans to award approximately:

- 55 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 30 percent of the available funds for projects that support careers in related services; and
- 15 percent of the available funds for projects that support careers in early intervention.

For Further Information Contact: Verna Hart, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3519, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5392. FAX: (202) 205–9070. Internet: Verna__Hart@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–7381.

Absolute Priority 2—Preparation of Personnel To Serve Children and Youth with High-Incidence Disabilities

Background

In many States, there are insufficient numbers of personnel available to meet the needs of children with high-incidence disabilities. In addition, the quality of personnel preparation programs needs to be improved so that professionals will be better prepared to help children with high-incidence disabilities reach their individual developmental goals and meet challenging standards.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children ages 3 through 21 with high-incidence disabilities such as mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disabilities. This priority supports projects that provide preservice preparation of special educators, including early childhood educators and related services personnel.

A preservice program is defined as one that leads toward a degree, certification, or professional standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, or endorsements.

Applicants may propose to prepare one or more of the following types of personnel:

(1) Special educators including speech and language, adapted physical education, and adaptive technology personnel;

(2) Related services personnel who provide developmental, corrective, and other supportive services that assist children with high-incidence disabilities to benefit from special education; and

(3) Early childhood special education or related services personnel who address the needs of children age three through five with high-incidence disabilities and their families.

The Secretary particularly encourages projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with high-incidence disabilities in inclusive settings.

Projects must:

(a) Show through letters of acknowledgement from States or other documentation that the proposed professional development activities support the Comprehensive Systems of Personnel Development of the State or States where personnel prepared by the project are expected to be employed;

(b) Show through letters of acknowledgement from States or other documentation that the proposed personnel preparation meets the standards for employment in the State or States where personnel prepared by the project are expected to be employed;

(c) Prepare personnel to address the needs of children with high-incidence disabilities from different cultural and language backgrounds;

(d) Incorporate best practices in the design of the program and curricula;

(e) Incorporate curricula that focus on improving results for children with high-incidence disabilities;

(f) Promote high expectations for children with high-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and,

(g) Develop linkages with Education Department technical assistance providers to communicate information on program models used and program effectiveness.

Under this absolute priority, the Secretary plans to award approximately:

- 55 percent of the available funds for projects that support careers in special education;
- 30 percent of the available funds for projects that support careers in related services; and,
- 15 percent of the available funds for projects that support careers in early childhood education.

For Further Information Contact: Martha Bokee, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3078, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5509. FAX: (202) 205–9070. Internet: Marth__a Bokee@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–7381.

Program Authority: 20 U.S.C. 1431.

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Priority: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only an application that meets this absolute priority:

Absolute Priority—Center To Promote Collaboration and Communication of Effective Practices for Children With, or At Risk of Developing, Serious Emotional Disturbance (SED)

Background

''Collaboration'' is one of the seven strategic targets identified in the National Agenda for Achieving Better Results for Children and Youth with SED, developed by the Office of Special Education Programs (OSEP) with extensive participation by a variety of individuals and organizations. Collaboration is critically important, at Federal, State, and local levels: ''To promote systems change resulting in the

development of coherent services built around the individual needs of children and youth with and at risk of developing SED.'' In the past, there has been too little interaction between agencies and service providers, e.g., education, mental health, child welfare, and juvenile justice. Lack of coordination between and across agencies has had a negative impact on children and families. The new direction, demonstrated in many of the projects currently funded by OSEP and other agencies, is toward more ''seamless'' and ''wrap-around'' service delivery models built around the needs of students, families, and communities—systems that coordinate services, articulate responsibilities, and provide system-wide and agency-level accountability.

Many of these new model programs are only in their infancy, but are already documenting their effectiveness. It is essential that mechanisms be put in place to foster the identification, development, and exchange of information about these innovative projects—to communicate their findings and approaches nationally to other communities and agencies that are seeking solutions to the needs of children with mental health problems and their families.

Priority: The Secretary establishes an absolute priority to support one cooperative agreement for a center to promote Federal, State, and local interagency collaboration and facilitate the identification, development, and exchange of information on effective practices to improve services for children with SED and for children with emotional and behavioral problems who are at risk of developing SED. The center must coordinate and collaborate with related centers and activities across agencies, including but not limited to: OSEP's ongoing activities to validate and communicate the SED National Agenda; other OSEP and Department-supported technical assistance and information exchange activities; and the two rehabilitation research and training centers (RRTCs) on children's mental health jointly funded by the National Institute on Disability and Rehabilitation Research (NIDRR) and the Center for Mental Health Services (CMHS). The center must provide and support information identification, development, and exchange for Federal, State, and community-based projects and programs providing services for children with or at risk of SED in accordance with a plan that describes the centers schedule.

The center must:

(1) Establish working relationships with Federal, State, and local programs and projects to identify and develop useful and usable information for, and to foster the exchange of usable and useful information with—

(a) Federal, State, and community-based programs and projects to assist them in their efforts; and

(b) Broader audiences of individuals and organizations including parents and family members of children with or at risk of serious emotional disturbance.

(2) Ensure and facilitate access, including electronic and telecommunication access, to information on SED, including information on projects funded by the Office of Special Education and Rehabilitation Services; other offices in the Department of Education; the Departments of Health and Human Services, Labor, and Justice; and other sources such as foundations and associations, as appropriate.

(3) Evaluate the impact of information identification, development, and exchange activities.

It is anticipated that initial information exchanges will rely heavily upon information already produced by programs and projects, but that additional information will be synthesized and developed by the center based on findings from the available research and information/findings provided to the center by programs and projects.

The center must also ensure that the targets and cross-cutting themes of OSEP's National Agenda for Achieving Better Results for Children and Youth with SED are addressed in the center's information activities. Four areas of particular interest that must be addressed in information activities are: (1) Early identification, intervention, and prevention; (2) behavior management, conflict resolution, and other approaches to creating more productive and safe educational environments for all students; (3) personnel preparation; and (4) evaluation of community-based (local) program and service effectiveness.

Under this priority, the Secretary intends to award one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project period, the Secretary will consider, in addition to the requirements of 34 CFR 75.253(a), the factors noted below, and the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. In its budget for the second year, the center must set aside funds to cover the costs of the review team. These funds are estimated to be approximately $4,000.

The Secretary will also consider the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the center; and

(b) The degree to which the center's evaluation methods and information activities demonstrate the potential for advancing significant new knowledge.

The Secretary particularly encourages applicants for this cooperative agreement to incorporate technologically innovative approaches in all aspects of center activities, to improve their efficiency and impact.

The project must budget for two trips annually to Washington, D.C., for: (1) A two-day Research Project Directors' meeting; and (2) another meeting, in the first quarter of each project year, to meet and review project plans and accomplishments with the OSEP project officer and other OSEP and other agency staff to share information on the project.

For Further Information Contact: Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet: Tom__Hanley@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1426.

Dated: May 3, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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Part III

Department of Justice

Office of Justice Programs

Program Plans for Fiscal Year 1996; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP NO. 1079]

ZRIN 1121–ZA33

Program Plans for Fiscal Year 1996

AGENCY: Department of Justice, Office of Justice Programs.

ACTION: Notice of program plans.

DATES: See specific Program Plan.

ADDRESSES: All questions concerning these Program Plans should be addressed to the appropriate Bureau or Office at 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

Preface: OJP Bureaus' Fiscal Year 1996 Program Plans

The Fiscal Year 1996 Program Plans for the United States Department of Justice, Office of Justice Programs (OJP) Bureaus—the National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime—represent a continuation of our concerted effort to work in partnership with law enforcement and criminal justice agencies across the nation to break the cycle of drugs and violence and eliminate the consequences of crime. This represents, as well, the second year that OJP will have published all its discretionary Program Plans together in the Federal Register.

Because of scarce resources at every level of government today, the OJP Program Plans emphasize increasing the collaboration across Federal, State, and local agencies; leveraging resources with other Federal agencies, foundations, and the private sector; identifying specific needs, priorities, and gaps in the system; and implementing innovative strategies that demonstrate concrete results while at the same time being cost-effective. Because many of today's crime problems require solutions that extend beyond traditional criminal justice boundaries, new systemwide responses are encouraged and comprehensive community efforts are highlighted.

This is particularly important in strengthening our response to escalating youth violence—especially gang activity—and juvenile victimization. Building on the development of the OJJDP Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and the National Juvenile Justice Action Plan released by the Attorney General this Spring, the FY 1996 plan supports a balanced approach to aggressively addressing juvenile delinquency and violence through graduated sanctions, improving the juvenile justice system's ability to respond, and preventing the onset of delinquency. Initiatives to address violent, serious, and chronic juvenile offenders are highlighted. Major new program areas focus on the development of one-stop, community-based intake, assessment, referral, and program service centers; supporting the linkages between community and law enforcement responses to youth gun violence and gang activity; and improving the dependency and criminal court systems and the community's response to child abuse and neglect—factors studies show perpetuate violence in future generations.

The OJP Program Plans also support community-based initiatives that recognize the lead role that communities must play in violence prevention and the strong coordinated, multidisciplinary approach required to combat crime in our neighborhoods. For example, using a planning grant approach which emphasizes the importance of first developing community mobilization strategies in key segments of the criminal justice system, BJA's Comprehensive Communities Program—which is being continued in FY 1996—encourages a jurisdiction-wide approach that includes community policing, the establishment of drug courts, expedited prosecution and diversion, gang prevention and intervention, dispute and conflict resolution, and alternatives to incarceration.

Building on the achievements of past efforts and guided by extensive input from its constituent groups, the OVC programming looks to communities to establish integrated, inclusive environments where comprehensive services are provided for crime victims in a single location. The plan offers communities the information, training, tools, and technical assistance needed to create supportive, multidisciplinary facilities especially designed for victims.

Underlying all the Program Plans is the importance of understanding ''what works'' and ''best practices'' so that jurisdictions can learn from one another and not have to constantly ''reinvent the wheel.'' In this regard, the NIJ plan continues its long-range emphasis on developing knowledge and Federal leadership that will assist jurisdictions in advancing six important goals: reduce violent crime, reduce drug- and alcohol-related crime, reduce the consequences of crime, improve crime prevention, improve law enforcement and justice systems, and develop new technologies.

One opportunity we have to work together to make our communities safer is through the training and technical assistance available from OJP. As we endeavor to determine ''what works''—through research, evaluation, and demonstration grants—communities are encouraged to request technical assistance and training to replicate successful demonstration programs and implement ''best practices.''

We will be issuing separate solicitations for Crime Act programs in the areas of Violence Against Women, Drug Courts, Corrections Facilities Construction, Residential Substance Abuse, and the National Criminal History Improvement Program. For information about these programs—as well as about the application process for the programs described here—you can call the DOJ Response Center at 1–800–421–6770.

I hope that the OJP Program Plans that follow are responsive to the most significant needs in the criminal justice field; they represent our best thinking on how the Federal government can make a solid contribution to the problems of crime and violence facing this country.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

Bureau of Justice Assistance

FY 1996 Discretionary Grant Program Plan

Dear Colleague:

I am pleased to present the Bureau of Justice Assistance (BJA) Discretionary Program Plan for Fiscal Year (FY) 1996. Through the Byrne Discretionary Grant Program, BJA provides leadership for the prevention and control of crime and violence and for criminal justice system improvement at the State and local levels. BJA also develops and tests new approaches in criminal justice and crime control, and encourages replication of effective programs and practices by States and local agencies.

Our mission is to provide leadership and assistance in support of local criminal justice strategies to achieve strong neighborhoods and safe communities. Accordingly, this year we will intensify our focus on the tasks of helping to make communities safe, building strong crime-resistant neighborhoods, increasing citizen involvement in their communities, and improving the effectiveness of the criminal justice system. We are guided in the achievement of our mission by a very specific set of programmatic goals. BJA's programmatic goals are:

- To promote effective innovative crime control and prevention strategies.
- To demonstrate and promote replication of effective crime control programs that

support public-private partnerships, planning, and criminal justice system improvement.

- To leverage and efficiently administer available resources.
- To provide a dynamic work environment that fosters and encourages excellence, innovation, and responsiveness.

The resultant FY 1996 BJA Discretionary Grant Program Plan addresses many of the most pressing challenges facing the Nation's criminal justice system. For example, the Program Plan addresses the issue of youth violence through programs that support drug education, prevention, and treatment; build skills in conflict resolution; intervene to reduce criminal use of guns and gang involvement; and provide alternative correctional sanctions for first-time nonviolent offenders. Additionally, the unique needs of the elderly are recognized through programs that promote safety and independence for the elderly, enhance resource availability through productive public and private partnerships, and provide protection against health care fraud.

Byrne discretionary grant awards support demonstration projects, national-scope programs, training and technical assistance, and other innovative programs that fill the gaps in the criminal justice system to make it stronger and more comprehensive. Towards this end, substantial BJA discretionary funds will be used to continue strengthening community-based initiatives, such as the Comprehensive Communities Program and, within Native American communities, the Tribal Strategies Against Violence Program. Similarly, the BJA Comprehensive Homicide Initiative emphasizes the importance of multiagency coordination—at all levels of government—in addressing prevention, intervention, enforcement, and prosecution.

In summary, the BJA FY 1996 Discretionary Program Plan will target funds, training, and technical assistance in support of effective and innovative programs that show the greatest potential for addressing the Nation's criminal justice challenges. I welcome your comments and your partnership.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

Introduction

The Bureau of Justice Assistance (BJA) of the U.S. Department of Justice supports States and local communities in addressing problems of crime and violence. During Fiscal Year (FY) 1996, BJA is placing emphasis on implementing comprehensive approaches to crime, neighborhood-based programs with active citizen involvement, violence prevention and control initiatives, and programs that not only improve the functioning of the criminal justice system, but also focus on enhancing the system's ability to remove serious and violent offenders from our communities.

This FY 1996 Discretionary Grant Program Plan provides summaries of these programs, which are funded under the Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne) Discretionary Grant Program. In addition, it describes planned activities for the Regional Information Sharing Systems Program and the National White-Collar Crime Center, which also are administered by BJA, and joint efforts with other Federal agencies.

Program Goals

The FY 1996 Discretionary Grant Program Plan addresses BJA's two goals in assisting State and local units of government: (1) Reduce and prevent crime and violence; and (2) Improve the functioning of the criminal justice system. To facilitate achievement of these goals, enhanced coordination and cooperation of Federal, State, and local efforts will be emphasized. Objectives for each of the goals are outlined below, followed by BJA's programmatic priorities and framework and program summaries that describe how the goals will be achieved.

Goal 1—Reduce and Prevent Crime and Violence

Objectives:

- Encourage the development and implementation of comprehensive strategies to reduce and prevent crime and violence.
- Encourage the active participation of community organizations and citizens in efforts to prevent crime, drug use, and violence.
- Provide national-scope training and technical assistance in support of efforts to prevent crime, drug use, and violence.
- Provide young people with legitimate opportunities and activities that serve as alternatives to crime and involvement with gangs.
- Reduce the availability of illegal weapons; and develop programs to address violence in our communities, homes, schools, and workplaces.

Goal 2—Improve the Functioning of the Criminal Justice System

Objectives:

- Enhance the capacity of law enforcement agencies to reduce crime—especially drug trafficking, drug sales, and violence.
- Improve the effectiveness and efficiency of all aspects of the adjudication process.
- Assist States in freeing prison space for serious and violent offenders through the design, development, and implementation of effective correctional options for nonviolent offenders.
- Enhance the ability of State and local agencies, in conjunction with the Immigration and Naturalization Service (INS), to apprehend and deport criminal aliens.
- Evaluate the effectiveness of funded programs, disseminate program results, and enhance the ability of criminal justice agencies to use new information technologies.

How Program Priorities Are Established

Priorities for the FY 1996 Discretionary Grant Program reflect a balance of congressional mandates, Administration priorities, and needs expressed by State and local criminal justice practitioners. The two overarching goals listed above are derived directly from the authorizing legislation for the Byrne Discretionary Grant Program. Priorities for a number of specific programs to address those goals are mandated by Congress through the earmarking of the Byrne Discretionary Grant Program appropriation.

During the recent Byrne Program planning process, BJA solicited input on priorities from national organizations representing State and local governments, criminal justice agencies, and community groups. Input was also requested from the State agencies that administer the Byrne Formula Grant Program. This year, BJA has instituted a continuing practice of convening a number of focused program-planning workshops, or focus groups. These focus groups, structured around a specific criminal justice issue, are comprised of interdisciplinary policymakers and practitioners from all levels of government. They serve as a forum to discuss needs, identify emerging issues, and propose innovative programmatic solutions.

Types of Programs To Be Funded

BJA is authorized by Congress to award grants to public and private agencies and organizations for national-scope, demonstration, training, and technical assistance programs in support of States and local jurisdictions. National-scope programs provide a service or product of benefit throughout the country or across multiple States, or address issues of national concern. Demonstration programs develop, test, evaluate, and document new programs and practices. Training for State and local criminal justice practitioners and other professionals provides state-of-the-art information on effective programs and practices. Technical assistance is provided to sites participating in demonstration programs or, depending on available resources, is provided to help an individual

jurisdiction implement a program or practice or address a specific issue.

How Discretionary Grants Will Be Made

This year, the majority of the discretionary grant funding is being awarded on a noncompetitive basis. The following factors limit the number of competitive programs:

Congressional Earmarks—Each year Congress directs BJA to award a portion of the appropriated Byrne Program funds to specified programs and/or organizations. In FY 1996, the Conference Report of the Appropriations Committee directed the funding for $45.6 million of the $60 million likely to be appropriated for general discretionary programs, such as the Weed and Seed Program, the National Citizens' Crime Prevention Campaign, the Drug Abuse Resistance Education (D.A.R.E.) Program, and the Washington, D.C., Metropolitan Area Drug Enforcement Task Force.

Continuation and Implementation Grants—Many of BJA's programs require several years of implementation to accomplish their goals. Demonstration sites, which are generally identified through a competitive selection process, may require 2 to 3 years of funding to fully develop, implement, and evaluate a program. In addition, BJA has funded several initial planning efforts, with implementation funding provided in subsequent years.

Limited Competition—When specific program criteria or objectives are applicable only to a narrowly defined group of potential applicants, a limited competition may be held. Program criteria and objectives typically are defined by specific jurisdictional demographic variables or by a specific crime problem.

Sole Source Selection—In some cases, only one organization or agency has the capability, expertise, or constituents to adequately administer a program that BJA deems essential to implement. For example, an association representing a constituency that BJA wants to reach through technical assistance or training also may be the best organization to implement that program. In other cases, BJA may make an award on a noncompetitive basis to an agency that has developed an innovative program and has the expertise to implement it.

Framework for Programming

Guiding Principles

Three principles underpin the design of BJA's FY 1996 Discretionary Grant Program Plan—comprehensiveness, addressing unmet needs, and leveraging resources. These principles are embodied in each of the four programmatic themes, and reflect our intent to make the most effective and efficient use of limited Federal criminal justice program resources.

Comprehensiveness

Crime prevention and control initiatives are most effective when they relate directly to a comprehensive strategy. Such a strategy provides the context or anchor for addressing locally determined priorities; describes in detail how programs implemented by government agencies, other service providers, and residents mutually support one another in focusing on these priorities; and serves as the means for developing future partnerships among a wide variety of public and private resources. For these reasons, we have looked at ways of developing and, in some cases, reconfiguring programs to ensure that they are comprehensive in nature and promote partnerships that support local strategic planning and implementation.

Explicit in any successful State or local crime prevention and control strategy is the engagement of the ultimate beneficiaries—the community residents. Therefore, community-based strategies, and resulting initiatives, must focus on neighborhood problems by involving community leaders and residents in the planning and delivery of services. Among the programs we are supporting, the Comprehensive Communities Program, the National Citizens' Crime Prevention Campaign, and the Tribal Strategies Against Violence Program all support partnerships with Federal, State, and local governments, private organizations, and foundations that develop and achieve solutions addressing a multitude of problems concerning crime and quality of life.

Some comprehensive program approaches are problem specific. For example, the Comprehensive Gang Initiative demonstrates a model approach to gang issues that carefully balances consideration of prevention, intervention, and suppression strategies. The model is designed to bring together cooperative and coordinated efforts by the police, other criminal justice agencies, human services providers, community agencies, and residents.

Other programs, such as the Community-Based Prosecution Initiative, are not problem specific, but bring together the community, the prosecutor's office, and the local courts in problem solving, speedier access to justice, and facilitation of offender reintegration back into neighborhoods.

Addressing Unmet Needs

In carrying out its mission, BJA recognizes that the dollars available for Byrne Program discretionary funding represent a very small fraction of the overall resources available for criminal justice programming (less than one percent). To ensure that taxpayers receive the greatest return possible on the investment of these limited funds, we have focused on programs that complement previous or ongoing efforts, and we have made every attempt to avoid duplicating the efforts of other Federal agencies.

BJA provides balance in its approach, and emphasizes the involvement of key stakeholders in the development of new initiatives. In FY 1996, an important priority will be to address unmet needs by demonstrating or supporting programs designed to correct current deficiencies in the delivery of criminal justice services—deficiencies that threaten to compromise the effectiveness of the criminal justice system. Examples of these initiatives include:

The Community Prosecution and Community Probation Program, which will explore a range of innovations to improve access to criminal justice services at the community level.

The Training in Anti-Drug Activities and Cultural Differences Involving Illegal Aliens Initiative and the Criminal Alien Identification and Intervention Program, which provide training and technical support to State and local criminal justice agencies dealing with issues of criminal and illegal aliens.

The Comprehensive Homicide Initiative, which focuses on a holistic approach to homicide that integrates prevention, intervention, and enforcement measures through public agencies, private organizations, and the community.

The DNA Resource Unit, which will provide technical assistance to prosecutors in the understanding and use of DNA typing technology in the prosecution of cases.

The Assessment and Enhancement of Indigent Defense Initiative, which will explore methods for improving the overall effectiveness of the adjudication process.

The Correctional Options Program, which has provided a broad range of programming for provision of treatment services and alternatives to incarceration for nonviolent offenders. BJA's emphasis in FY 1996 will be to support a national dissemination and technical assistance initiative that will inform key decisionmakers at the State and local levels of the lessons that BJA

has learned about the planning, development, implementation, and evaluation of successful Correctional Options projects.

Leveraging Resources

BJA has a responsibility to ensure that programs are cost effective; that, where appropriate, costs are shared among entities receiving benefits from BJA-supported programs; and that there is a strong likelihood effective programs will be maintained beyond the point where Federal funds are no longer provided. Thus, BJA strongly encourages prospective applicants to consider all potential resources when developing program proposals and applying for Byrne Program grant funds.

Although Discretionary Grant Program funds may be used to pay up to 100 percent of total project costs under an initial grant award, BJA has instituted a policy of giving favorable consideration to proposals in which an applicant agency or jurisdiction has also committed its own resources in furtherance of program objectives. The applicant's resources could consist of funding derived from local appropriations or from other sources, public or private. Contributed resources may also be ''in kind,'' including dedicated personnel, facilities, supplies, or equipment. Volunteer efforts are also taken into consideration.

Successful leveraging of resources is illustrated in the following two examples. In BJA's Organized Crime Narcotics task force program, the participating agencies support all regular personnel costs and most infrastructure costs, and Byrne Discretionary Grant funds support limited overtime costs, investigative support costs, and some confidential expenditures. Alternatively, BJA has provided a grant to the Foundation for Advancements in Science and Education (FASE) to produce a film addressing the issue of date and spousal violence. BJA agreed to provide funding support on the condition that FASE match the grant amount with funds from other sources. Faced with this challenge, FASE was able to more than match the grant with funds from public and private sources.

To further facilitate a strong partnership with its grantees, and to increase the number of new initiatives, BJA has instituted a policy of providing a declining share of total costs for many projects where continuation funding is considered. In addition to making BJA funding resources more widely available for additional program opportunities, this policy requires a demonstration of commitment from applicants, enhancing the likelihood of program institutionalization. Thus, in FY 1996 and beyond, second-year awards will be made for a maximum of 75 percent of total project costs, and third-year awards will be made for up to 50 percent of total project costs.

Programmatic Themes

Program themes frame our guiding principles and provide the operational context through which BJA implements its national-scope, demonstration, training, and technical assistance programs. The themes result from priorities articulated by the Attorney General; our program experiences and lessons learned from demonstration and evaluation of crime prevention and control efforts; and the information provided by States in their Byrne Formula Grant Program strategies.

Public—Private Partnerships in Support of Local Strategies

Developing and sustaining partnerships is essential, especially when addressing crime issues through comprehensive strategies. Competing demands on resources, development of new skills and approaches to problem solving, emergence of private foundations focusing on public safety issues, and the direct participation of the community itself are influencing the way in which government operates.

Partnerships among public agencies and between those agencies and private organizations are becoming a vital theme in delivering comprehensive services that address the quality of life in our communities. Effective partnerships begin with all participants engaged in strategy development, and carry through to the end goal of service delivery and evaluation.

BJA continues to stress the importance of public-private partnerships at the Federal, State, and local levels in its program development efforts. State and local officials are encouraged to collaborate to ensure that local, comprehensive crime prevention and control strategies are integrated into State planning efforts. This relationship helps to ensure that Byrne Formula Grant funds, other Federal resources, and State-appropriated monies are channeled in a coordinated manner in support of local comprehensive initiatives. Evidence of these partnerships, through memoranda of understanding, commitment of resources, and shared responsibility for developing and implementing strategies to make our communities safe, will be a determining factor in BJA's commitment of resources.

Many of the programs to be implemented in FY 1996 will build upon partnerships developed in previous years. As some of these efforts reach the final stages of demonstration, and as Federal financial support is phased out, the strength of local partnership arrangements will be even more critical to ensure institutionalization. For example, BJA soon will be completing the Children-At-Risk Program, which is supported by BJA and a national public-private partnership consisting of the Center for Addiction and Substance Abuse (CASA) and six private foundations that focus on youth intervention. This effort, equally supported by the U.S. Department of Justice and the private sector, reflects the commitment of over $7.5 million since FY 1992.

Other programs, such as the Comprehensive Communities Program (CCP) and Pulling America's Communities Together (PACT) have experienced enormous success in building partnerships. In Denver, the Alliance for the Prevention of Violence, a collaborative of charitable organizations that serves Colorado, has integrated the PACT/CCP effort into its philanthropic considerations. The East Bay Corridor CCP initiative, a program that unites 18 cities in two counties in anticrime initiatives, joins the public agencies from those jurisdictions with the East Bay Community Foundation, a local funding collaborative, to focus on youth crime in the Corridor.

Enhancement of Public Confidence in the Criminal Justice System

In recent years there has been a perception of growing erosion of public confidence in the criminal justice system and the services it provides. Many factors have contributed to this concern—including public outrage resulting from isolated criminal incidents, such as crimes that have been committed by ex-offenders on parole; use of excessive force by law enforcement; urban disorders; and an emphasis in newspaper and television news reports on sensationalizing incidents of violent crime.

BJA supports programs that promote balance and fairness in law enforcement and the criminal justice system. By supporting programs that feature community participation as a cornerstone, BJA seeks to educate and actively engage citizens, thereby improving public confidence in the criminal justice system.

Through its law enforcement programs, BJA provides a solid foundation for enabling jurisdictions to ensure public safety and further

promote public confidence. Such programs expand coordination with antiviolence task forces, provide assistance to State and local criminal justice agencies, and support communities in the control and prevention of street crime.

A National Sentencing Symposium will be co-sponsored by BJA, the National Institute of Justice (NIJ), and the State Justice Institute (SJI). This collaborative initiative will address the public's lack of confidence in the system, examine the strengths and shortcomings of current sentencing policies and address the importance of accountability and the need to alleviate sentencing disparities.

Through the Community Prosecution Program, BJA will demonstrate community engagement with prosecutors' offices and the local courts in problem solving, providing speedier access to justice, and facilitating the reintegration of offenders back into neighborhoods. This program will promote a positive image of the criminal justice system, allay public fear, and improve neighborhood and community involvement with criminal justice professionals.

Alternatives to incarceration for nonviolent offenders is another important programmatic area. Often, nonviolent offenders who could be punished more effectively through a less expensive alternative are sentenced to incarceration. A recent analysis of the annual needs assessments that are conducted through the Byrne Formula Grant Program indicated that the two areas of greatest need at the State and local levels are alternatives to incarceration and offender treatment services.

In FY 1996, BJA will support a national dissemination and technical assistance initiative to inform key decisionmakers at the State and local levels about the lessons learned in the planning, development, implementation, and evaluation of successful, cost-effective, Correctional Options projects for nonviolent offenders. These programs maintain public safety and, at the same time, hold offenders accountable.

Criminal Justice System Response to Violence—Particularly Youth Violence

Although 1994 Uniform Crime Reporting (UCR) data show that violent crime dropped 4 percent and property crime dropped 3 percent, citizens across the country believe otherwise. Whereas violent crime rates for older adults have remained steady or declined, the public believes that violence is on the increase. This belief is reflected in the 1993 U.S. Department of Justice (DOJ) National Crime Victimization Survey, which marked a significant increase of 25 percent in the violent victimizations of black males aged 12 to 24. The Bureau of Justice Statistics (BJS) reported in its Selected Findings: Violent Crime that young people aged 16 to 24 consistently have the highest violent crime rates. When gang affiliation is considered, these youth-based crime statistics increase at crisis proportions.

Other national-scope surveys indicate the following:

- Elected officials in almost 400 cities believe that youth crime and violence has escalated.
- Throughout the year, 4 million women are physically abused by their husbands or boyfriends.
- The annual number of child abuse cases is growing.
- Drug use, especially marijuana, is on the increase among students.
- A child dies from gunfire every 98 minutes.

To deter this violence, BJA is working with representatives of Federal, State, tribal, and local governments and community leaders to enhance their current criminal justice planning processes to better implement comprehensive, systemwide strategic interventions at the neighborhood level. When properly applied, this holistic approach, which is supported with FY 1996 crime prevention funding, is cost effective, provides focus for the delivery of services (e.g., law enforcement, social, and education services), involves citizens as partners, and assists youth in making responsible decisions to develop healthier and safer lifestyles.

Evaluation and Assessment Efforts

Critical to gauging the success of the investment of taxpayer dollars is the support of evaluation efforts that measure what works and what doesn't work in crime control and prevention and in criminal justice system improvement. This information can be disseminated to the State and local levels, where decisions about replication of program successes are made.

Because we believe that it also is critical to reinforce with the States the role that evaluation must play in any grant program, and to help States build the capacity to measure the impact of programs that they fund, we are continuing our State and local capacity-building initiative with the assistance of NIJ. If the States are to serve as laboratories for evaluation and assessment, they must institutionalize performance measurement, monitoring, and reporting mechanisms. BJA's evaluation capacity-building initiative supports these efforts.

In partnership with NIJ, we are designing a challenge program whereby States will be invited to partner with a local research/evaluation institution such as a university, select a promising program for rigorous evaluation that otherwise might not be evaluated, and propose a research design.

The principles and programmatic themes are cross-cutting, and together form the framework for the BJA program. This framework has evolved from our programmatic experience and will help chart our direction for future programming efforts. While the individual program summaries are presented by ''discipline,'' each program also represents one or more principle and theme.

Program Summaries

Comprehensive Programs

Comprehensive Communities Program

Grantee: 16 sites nationwide

The Comprehensive Communities Program (CCP) is demonstrating an innovative, comprehensive, and integrated multiagency approach to comprehensive violent crime control and community mobilization in 16 jurisdictions across the country.

There is perhaps no more urgent domestic problem facing our country than violence. The only way to make progress against this epidemic is to marshal the coordinated efforts of communities; the private sector; and Federal, State, and local governments. CCP seeks to catalyze the development of such partnerships.

Two key principles underlie this initiative. First, communities must play the lead role in fostering violence prevention partnerships. Second, State and local jurisdictions must establish strong coordinated and multidisciplinary approaches. Under the Comprehensive Communities Program, communities faced with high rates of drug abuse and violent crime develop a comprehensive strategy for crime and drug control that requires police and other city agencies to work in partnership with the community to address crime- and violence-related problems and the environment that fosters them.

CCP goals are:

- To suppress violence and restore the sense of community wellness necessary to effectively recapture the security of our neighborhoods.
- To focus on community problems and concerns by initiating comprehensive planning and improved

intergovernmental and community relationships.

CCP objectives are:

- To develop a comprehensive, multiagency strategy within each community to identify the causes and origins of violence and to control and prevent violent crime and drug-related crime.
- To include in each strategy a jurisdictionwide commitment to community policing and other efforts that encourage citizens to take an active role in problem solving.
- To coordinate existing Federal, State, local, and private agency resources and concentrate these resources to maximize their impact on reducing violent crime and drug-related crime in the program communities.

The Comprehensive Communities Program has been administered in two phases. During Phase I, between April and September 1994, planning grants enabled the 16 jurisdictions to develop their crime control and community mobilization strategies. Phase II, from October 1, 1994, to September 30, 1996, provided initial funds to the 16 jurisdictions to begin implementing these strategies. The strategies require criminal justice agencies, other governmental organizations, and the private sector to work in partnership with the community. Each strategy includes a jurisdictionwide commitment to community policing, coordination among public and private agencies (e.g., social services and public health agencies), and efforts that encourage citizens to take an active role in problem solving. In addition to the community policing and community mobilization components, most of the strategies include application of drug courts, expedited prosecution and diversion, gang prevention and intervention, dispute and conflict resolution, and alternatives to incarceration.

Each of the sites is encouraged to coordinate with and complement other comprehensive Federal, State, and local efforts. For example, the CCP strategies for Atlanta, Denver, Omaha, and Washington, D.C., are tailored specifically to support the Pulling America's Communities Together (PACT) Initiative in those jurisdictions. Also, many of the sites are participating in the Empowerment Zone/Enterprise Community Initiative; the CCP strategy can represent a viable crime-control component for that initiative. In addition, several of the sites have included in their local strategies enhancements to or expansion of Weed and Seed efforts in selected target neighborhoods.

Due to the broad nature of CCP and the decision to draw from multiple and independent initiatives, technical assistance and training in support of CCP is being provided through several sources, as follows:

Criminal Justice Associates (CJA) coordinates overall technical assistance and training delivery under the program and prepares program documents (i.e., the implementation manual, fact sheets, and program status reports). At the project level, CJA focuses on site needs relating to project management and alternatives to incarceration.

The National Crime Prevention Council (NCPC) provides program-level assistance in preparing documents (i.e., coordination in developing the implementation manual and distributing newsletters). NCPC focuses on site needs relating to community mobilization and engagement, dispute and conflict resolution, and resource development.

The Police Executive Research Forum (PERF) focuses on comprehensive gang initiatives in 11 of the 16 CCP sites.

The American Prosecutors Research Institute (APRI) focuses on site needs as they relate to community prosecution and prosecution and diversion.

In FY 1996, funds will be made available to a number of the demonstration sites to continue operations into FY 1997. Technical assistance will be provided through existing and continuation grants among the cadre of current providers.

Crime Prevention

National Citizens' Crime Prevention Campaign

Grantee: National Crime Prevention Council; Washington, DC

The National Citizens' Crime Prevention Campaign focuses on helping individuals, community and civic organizations, and Federal, State, and local government agencies build better, safer, and more caring communities. FY 1996 activities will enable the Campaign to continue its work on crime and violence prevention and drug demand reduction. Work elements will address the production and dissemination of air and print ads using McGruff the Crime Dog and nephew Scruff public service announcements (in English and Spanish) that target both youth and their caretakers; the development and reproduction of an array of crime and drug abuse prevention support materials; and the provision of national, State, and local technical assistance and training workshops in topical areas ranging from planning and managing crime prevention to comprehensive planning development.

Boys & Girls Clubs of America

Grantee: Boys & Girls Clubs of America; Atlanta, GA

BJA will continue to provide Federal resources to the Boys & Girls Clubs of America for the establishment and enhancement of Boys & Girls Clubs in public housing and other community settings where there is a concentration of poverty, crime, and violence. FY 1996 activities will emphasize the partnering of BJA and Boys & Girls Clubs of America staff to identify local recipient sites in up to 30 communities across the country; the continued support of jurisdictions participating in the BJA-sponsored Comprehensive Communities Program; the incorporation of conflict resolution, mentoring, and parental outreach and training into the local programming of clubs receiving Federal enhancement awards; and the establishment of a national Native American advisory board that will meet regularly to assess and provide program recommendations for clubs established on Indian reservations.

Drug Abuse Resistance Education

Grantee: D.A.R.E. America; Inglewood, CA

In FY 1996, BJA will continue its work with D.A.R.E. America to support the provision of Drug Abuse Resistance Education (D.A.R.E.) technical assistance and training to local and State law enforcement officers and the accreditation of State D.A.R.E. Training Centers. These initiatives will be accomplished through provision of resources for the five D.A.R.E. Regional Training Centers (RTCs) administered by the Arizona Department of Public Safety, the City of Los Angeles Police Department, the Illinois State Police, the North Carolina Bureau of Investigation, and the Virginia State Police. Specifically, D.A.R.E. America and the RTCs will provide D.A.R.E. Officer Training for new D.A.R.E. officers; D.A.R.E. In-service Training for experienced D.A.R.E. officers; Mentor Officer Training; D.A.R.E. Parent Program Training for instructors who use the D.A.R.E. curriculum to work with and train parents; D.A.R.E. junior and senior high school student training; program development; assessments of State D.A.R.E. Training Centers; accreditation of law enforcement agencies as D.A.R.E. Training Centers; and technical assistance for local agencies replicating the D.A.R.E. Program.

National Night Out

Grantee: National Association of Town Watch; Wynnewood, PA

This year-long program involves the continuing participation of more than 28 million people, including law enforcement personnel; individuals from other units of government, business, education, and community organizations; citizens; and youth in over 8,800 communities in all 50 States, U.S. territories, and U.S. military bases around the world. Administered by the National Association of Town Watch, Inc. (NATW), FY 1996 support will enable NATW to continue providing information, educational materials, and technical assistance for the development of cost-effective police—community partnership efforts that work toward reducing crime, violence, and substance abuse at the national, State, local, and neighborhood levels.

Tribal Strategies Against Violence Program

Grantees: Assiniboine and Sioux Tribes; Poplar, MT and Rosebud Sioux Tribe; Rosebud, SD

Tribal Strategies Against Violence is a Federal—tribal partnership initiative designed to empower Native American communities through the development and implementation of reservationwide strategies to reduce crime, violence, and drug abuse. Primary program focus is on the formation of a centralized planning team comprised of service providers, whose goal it is to develop short-term and long-term strategies that encompass community policing and prosecution, domestic abuse, juvenile delinquency, and prevention education. FY 1996 program activities will extend the program beyond the initial project sites on the Fort Peck, Montana, and Rosebud, South Dakota, Reservations. BJA, through a limited competitive process, will work with the Office of Justice Programs (OJP) American Indian and Alaskan Native Desk and the Bureau of Indian Affairs (BIA), U.S. Department of Interior, to identify up to four regional sites across the country. Reservations selected for program participation will be representative of the Northwest, South-Southwest, Midwest-Great Lakes, and East regions.

Law Enforcement

Washington, D.C., Metropolitan Area Drug Enforcement Task Force

Grantee: Arlington County Police Department; Arlington, VA

The Washington, D.C., Metropolitan Area Drug Enforcement Task Force will continue to (1) provide a visible law enforcement presence; (2) disrupt major links between drug suppliers, distributors, and users; (3) initiate enforcement action against property owners who knowingly allow their property to be used in the distribution of illicit drugs; (4) develop comprehensive intelligence systems; and (5) coordinate with appropriate agencies regarding illegal firearms used by drug organizations.

Gang Organized Crime Narcotics Violence Enforcement Program

Grantees: Bernalillo County Prosecutor's Office; Bernalillo County, NM and Multnomah County Prosecutor's Office; Multnomah County, OR

This program will continue to assist local law enforcement and prosecution agencies in addressing the growing problem of gang-related violence, with a special focus on drugs and firearms. Two sites will be funded to continue gathering intelligence and to develop investigative and prosecutorial strategies designed to weaken the structure and activities of violent gangs.

Prison Gang Intelligence Program

Grantee: Midstates Organized Crime Information Center; Springfield, MO

The Prison Gang Intelligence Program will be continued in FY 1996 to implement a nationwide capability of collecting, analyzing, and sharing information on prison gangs, gang members, and prison gang activities. The program also will provide liaison and coordination activities to corrections agencies and law enforcement agencies in data collection and dissemination efforts.

The purpose of the Prison Gang Intelligence Program is to provide for the establishment of a system to gather, store, and disseminate intelligence information on prison gang members and prison gang activities on a nationwide basis. This system will provide valuable support and assistance in the investigation and prosecution of gang-related criminal activity. It will create a central repository of prison gang information, formalize data collection methods, and standardize gang validation criteria. It will create a mechanism whereby State and local corrections and law enforcement agencies can share information and be provided analytical products that document prison gang developments and trends. A prison gang technical assistance capability will also be established.

The program goal is to facilitate, through BJA's Regional Information Sharing System (RISS) projects, the collection, exchange, and analysis of information related to prison gangs, gang members, and prison gang activities; and to provide liaison and training activities to law enforcement, prosecution, and corrections agencies nationwide.

Center for Task Force Training

Grantee: Institute for Intergovernmental Research; Tallahassee, FL

The Center for Task Force Training project will continue to help State and local agencies address criminal justice management issues and to provide dedicated training and technical assistance in support of the two Gang Organized Crime Narcotics Violence Enforcement Program sites, State and locally funded multiagency task forces, and other task forces supported by Byrne Formula Grant Program funds. The project will be expanded in FY 1996 to include a specialized training program that addresses multiagency antiterrorism preparedness. The Domestic Terrorism Training Program, which currently is under development with the Federal Bureau of Investigation (FBI), will develop, test, and evaluate the law enforcement antiterrorism training curriculum; identify and document the technical assistance needs of law enforcement agencies in the area of antiterrorism planning and prevention, and plan the methods of delivery; and focus on the multiagency/multijurisdictional aspects of the law enforcement response to acts of domestic terrorism.

Firearms Trafficking Program

Grantee: Multiple sites nationwide

The Firearms Trafficking Program will continue to help State and local governments reduce incidents of violence by reducing the availability of and illegal trafficking in firearms. This program contains several component programs that BJA has found to be effective or promising:

The Firearms Licensee Compliance Program. This component enhances the ability of State and local law enforcement agencies to conduct more complete and comprehensive background investigations on applicants for new or renewed Federal Firearms Licenses.

The Firearms Investigative Task Force Program. This component is designed to identify, target, investigate, and prosecute individuals and dismantle organizations involved in the unlawful use, sale, or acquisition of firearms in violation of Federal and/or State firearms laws.

The Innovative Firearms Program. This component assists State and local

jurisdictions in developing and implementing innovative or enhanced projects designed to control illicit firearms trafficking.

Technical Assistance and Training to Rural Areas

Grantee: Rural Justice Center, University of Arkansas; Little Rock, AR

In FY 1996, BJA will continue to provide technical assistance and training to rural areas through the Rural Justice Center of the Criminal Justice Institute of the University of Arkansas, Little Rock. This program assists rural areas in the development of approaches and strategies that address the rising rates of crime, drug abuse, and violence, through the provision of technical assistance and training related to such issues as prevention, intervention, law enforcement, prosecution, courts, corrections, and treatment.

Training in Anti-Drug Activities and Cultural Differences Involving Illegal Aliens

Grantee: International Association of Chiefs of Police; Alexandria, VA

This program will be continued. Through a collaborative effort between the International Association of Chiefs of Police (IACP) and the Immigration and Naturalization Service (INS), the project will continue to present to local law enforcement officers a series of training seminars that will enable them to more effectively investigate crimes involving illegal aliens.

Criminal Alien Identification and Intervention Program

Grantees: Institute for Intergovernmental Research; Tallahassee, FL and National Criminal Justice Association; Washington, DC

In FY 1996, BJA will continue to fund technical assistance and support services to five demonstration sites funded in prior years. The Criminal Alien Identification and Intervention Program is designed to enable the earliest possible identification, through the Immigration and Naturalization Service (INS) Law Enforcement Support Center (LESC), of aliens arrested for felony offenses. Five States that have documented the largest alien populations in their correctional systems are continuing demonstration efforts in FY 1996 with projects funded in prior years.

The Criminal Alien Identification and Intervention Program also is designed to encourage States to modify statutes and policies and implement innovative techniques that intervene in the criminal justice process to expeditiously and fairly adjudicate illegal aliens arrested or convicted of felonies; and facilitate appropriate detainment and deportation of these aliens.

Supporting the demonstration sites and the program are two technical assistance efforts. The Institute for Intergovernmental Research provides onsite assistance to the States in preparing operational assessments, identifying promising approaches, and facilitating the testing of LESC. The National Criminal Justice Association (NCJA) provides research and technical assistance for the States, for enhancement of statutes and policies within the States.

In FY 1994 and FY 1995, participating States implemented Phases I through III of the program by establishing statewide criminal alien working groups represented by key State and local officials; conducting an intensive assessment of the current processes by which the State identifies and handles illegal aliens entering the criminal justice system; and documenting promising approaches to enhance the identification and intervention of these illegal aliens. Work will continue in the demonstration States, using prior year grant awards to implement and demonstrate promising approaches.

Comprehensive Homicide Initiative

Grantee: City of Richmond; Richmond, VA and City of Richmond; Richmond, CA

The Comprehensive Homicide Initiative is designed to effectively combat homicide and increase homicide clearance rates through the development and demonstration of a multifaceted approach that can be fully documented and ultimately replicated in other jurisdictions. This initiative addresses the underlying causes of homicide, including gang violence, domestic violence, violence associated with drug activity, and gun availability.

The goals of the program are to reduce homicide rates and improve homicide clearance rates, including ''cold case'' homicides; develop *innovative* strategies and processes that have a high probability for improving the prevention, intervention, enforcement, and prosecution of homicide cases that are replicable in other jurisdictions; and document local efforts to enhance replicability of successful components of the program to other jurisdictions.

The Cities of Richmond, Virginia, and Richmond, California, each have received funding to implement the recommendations of the International Association of Chiefs of Police (IACP) Murder Summit Report. These cities were selected due to their high or increasing homicide rates, geographical diversity, and participation in other comprehensive criminal justice initiatives that will provide a good base from which to move forward.

This comprehensive program requires coordination at the Federal, State, and local levels. Each city's plan must demonstrate coordination and cooperation among public agencies; private organizations; and municipal, county, State, and Federal agencies. The plan must demonstrate that this initiative will be integrated with other U.S. Department of Justice (DOJ)-funded programs in the local jurisdiction, such as the Comprehensive Communities Program; Weed and Seed; the Federal Bureau of Investigation (FBI) Safe Streets Program; and programs funded by the Office of Community Oriented Policing Services, the Drug Enforcement Administration, and the Office of Juvenile Justice and Delinquency Prevention. In addition, the program must involve coordination with the relevant U.S. Attorney's Office. Coordination with Housing and Urban Development and the Bureau of Alcohol, Tobacco and Firearms should also be included if relevant to the jurisdiction's program efforts. BJA has been working with each of the jurisdictions since November 1995. In each city, BJA held an onsite meeting that served as an initial opportunity to convene the representatives of the State and local agencies and representatives from Federal agencies with ongoing programs.

Clandestine Laboratory Strategy Training Program

Grantee: Circle Solutions, Inc.; Vienna, VA

In FY 1996, BJA will continue support to the Clandestine Laboratory Strategy Training Program. The program is based on the collective experiences and best practices of the BJA Model Clandestine Laboratory Enforcement Program demonstration sites and the BJA/Drug Enforcement Administration (DEA) Clandestine Laboratory Clean-Up Program. The program represents a significant investment and effort on the part of BJA to develop an effective method for combating clandestine drug laboratories in the United States. The training delivery system and followup technical support activities provided will ensure that the training reaches the audience for which it is intended in an efficient and cost effective manner.

The Clandestine Laboratory Strategy Training Program assists State and local policymakers and practitioners responsible for law enforcement resource allocation decisions in

developing policies, procedures, and programs related to the hazardous chemical problems associated with clandestine laboratories. The program provides a foundation from which a comprehensive, multiagency response can be developed at the State and regional levels. Beginning in FY 1994, Circle Solutions, Inc., building upon a successful developmental and piloting effort, implemented a program to provide training and followup technical assistance to State and local criminal justice agencies and other public safety agencies nationwide.

Assistance to Local Law Enforcement Agencies Significantly Impacted by the 1996 Olympic Games

Grantee: Georgia Criminal Justice Coordinating Council, Office of the Governor; Atlanta, GA

The purpose of this program is to assist local jurisdictions significantly impacted by the public safety demands of the 1996 Olympic Games in Georgia. The program was funded to satisfy a congressional earmark. Current projections indicate that involved local jurisdictions may incur in excess of 400,000 hours of unfunded overtime costs as a result of the public safety requirements for Olympic venues throughout the metropolitan Atlanta area and in sites outside Atlanta. This grant will help defray the costs of approximately 155,000 hours of anticipated overtime requirements of involved jurisdictions.

Regional Information Sharing System

Grantee: 6 sites nationwide

The Regional Information Sharing System (RISS) Program supports Federal, State, and local law enforcement efforts to combat criminal activity that extends across jurisdictional boundaries. Six regional RISS projects provide a broad range of intelligence exchange and related investigative support services to member criminal investigative agencies nationwide. The projects focus primarily on narcotics trafficking, violent crime, criminal gang activity, and organized crime.

In FY 1996, the RISS Program will complete electronic connectivity among all projects, as well as other systems, to better facilitate the collection, dissemination and analysis of criminal intelligence. Also in FY 1996, the RISS projects will work with the National Major Gang Task Force to encourage the sharing and dissemination of gang intelligence information between the law enforcement and corrections communities.

National White-Collar Crime Center

Grantee: West Virginia Office of the State Auditor; Charleston, WV

The National White-Collar Crime Center provides a national support system for the prevention, investigation, and prosecution of multijurisdictional economic crimes. These white-collar crimes include investment fraud, telemarketing fraud, boiler room operations, securities fraud, commodities fraud, and advanced-fee loan schemes. The Center's mission includes providing investigative support services to assist in the fight against economic crime, operating a national training and research institute focusing on economic crime issues, and developing the Center as a national resource in combating economic crime.

Adjudication

National Symposium on Sentencing

A national symposium on sentencing to be presented by BJA, the State Justice Institute, and the National Institute of Justice, will enable judges, legislators, prosecutors, defense counsel, corrections officials, police, and community representatives to discuss and share experiences and perspectives on current sentencing policy.

Trial Court Performance Standards and Measurement System: Coordination Efforts

Grantee: National Center for State Courts; Williamsburg, VA

After 8 years of development and testing, the Trial Court Performance Standards and Measurement System (TCPSM) has been completed and is in the process of being adopted by numerous jurisdictions. For example, the Judicial Council of California has adopted TCPSM as part of a new Standard of Judicial Administration. One of the most significant events in judicial administration in the last 10 years, TCPSM comprises a set of 22 standards and 68 individual measures for assessing trial court performance. States urgently need technical assistance to enable them to implement the system. The National Center for State Courts will provide that assistance to State and local courts. BJA also will be working with State agencies to explore the possibility of using block grants to assist State trial courts in fully reviewing, adapting where appropriate, and implementing TCPSM throughout the State.

Community Prosecution and Community Probation

Grantee: American Prosecutors Research Institute; Alexandria, VA

The Community Prosecution and Community Probation program consists of the following four components:

Technical Assistance and Training

In FY 1993 and FY 1994, the American Prosecutors Research Institute (APRI) convened two focus groups of experienced prosecutors who defined community prosecution and identified its key components. This information provided BJA and APRI with the framework to provide both intensive and general technical assistance and to produce several publications on the subject. In FY 1994 and FY 1995, APRI conducted two extremely well-received technical assistance conferences attended by over 75 prosecutors' offices.

In FY 1996, APRI will continue its technical assistance by matching prosecutors with community prosecution expertise with jurisdictions now planning or implementing community prosecution strategies. To further inform prosecutors on issues involving the planning, implementation, and operation of a community prosecution program, APRI will convene a series of regional planning workshops, an invitational symposium, and a national conference. In addition, APRI will provide intensive technical assistance and conduct studies of three demonstration sites, at least one of which will implement a community prosecution program in a jurisdiction where a community policing program already exists. APRI will compare, contrast, and analyze each demonstration site and disseminate a report on the results. APRI will assist in the National Institute of Justice (NIJ) evaluation of BJA's Community Prosecution demonstration projects.

Demonstration Projects

BJA will provide limited funds to up to three prosecutors' offices to implement the current strategies discussed in the APRI Community Prosecution Implementation Manual and supporting documents. These offices will be invited by BJA to submit an application for funding. Preference will be given to offices capable of committing an equal amount of resources to the project.

Community Probation

A significant segment of the Community Prosecution and Community Probation Program will be devoted to community probation. BJA will choose up to three demonstration sites where APRI, or a consultant working with APRI, will develop model community probation programs. These models will build upon recent BJA

accomplishments in its Community Policing and Community-Focused Courts programs and involve partnerships with the police, the judiciary, probation officials, public defenders, and the community. Preference will be given to applicants who commit local resources to the project.

Community-Focused Courts

The National Center for State Courts (NCSC) in Williamsburg, Virginia, will provide technical assistance to courts interested in implementing recommendations from both the community-focused court's agenda currently under development by NCSC and a consortium of court and community organizations. This followup program will explore innovative technologies, such as the Internet and videoconferencing, in offering assistance; and it will provide onsite assistance as needed. NCSC will develop an evaluation instrument for use by local universities to evaluate the efforts of the community courts. The program will complement ongoing BJA efforts in the community prosecution area and support existing local and State partnership programs.

Models of Court-Based Services to Children and Their Families

Grantee: National Center for State Courts; Williamsburg, VA

As an outcome to the Office of Justice Programs (OJP) task force on Childhood Victimization, BJA and the National Center for State Courts (NCSC) will expand their current program ''Models of Court-Based Services to Children and Their Families.'' Funded by BJA and the Office of Juvenile Justice and Delinquency Prevention, the program's purposes are to identify, document, evaluate, and further develop effective court-based service delivery to children and their families. The major goal is to improve collaboration among State trial, juvenile, and family courts and public health, mental health, and social services. NCSC will study and help two to three additional sites in the identification and coordination of cases involving child abuse and neglect and domestic violence. As part of the new effort, NCSC is looking at current sites supported by private funding organizations (i.e., the Kellogg Foundation, the Casey Foundation, and the Edna McConnell Clark Foundation) to determine if the projects can be augmented with a stronger court focus.

Assessment and Enhancement of Indigent Defense Services

Grantee: National Legal Aid and Defender Association; Washington, DC

In FY 1994, BJA awarded the National Legal Aid and Defender Association a grant to reestablish a national scope program to improve the defense component of the criminal justice system by providing State and local organizations that represent indigent defenders with quality training and technical assistance services.

This program expands on training events to enhance the quality of indigent defense providers' representation of drug and violent crime defendants both to obtain the best results for their clients and to reduce recidivism. This program will also support the expansion of the National Clearinghouse for Defense Services. The Clearinghouse is designed to respond to inquiries from defenders, State officials, the judiciary, and the general public about the delivery of defense services and substantive criminal defense issues. The Clearinghouse compiles, assesses, and disseminates information on proven programs and on trends and innovative strategies employed by indigent defense services throughout the country. A Clearinghouse Directory will be available that includes a listing of the files maintained and a summary of the services available through the Clearinghouse.

Statewide training programs that focus on defense issues, the development and use of diversion programs, and sentencing alternatives to incarceration will be expanded. In addition to covering traditional legal defense of a drug case, a training manual presents a distinctive approach to the defense of drug cases by integrating and emphasizing concrete strategies for treatment, intervention, and prevention; the manual will integrate guidelines for effective representation. This program will document the training practices used in drug and violent crime cases.

Prosecutor's Pre-Charging Diversion Program

Grantee: Office of the Prosecuting Attorney, Sixth Judicial District Pulaski County; Little Rock, AK

This program expands a citywide pilot project designed to reduce the recidivism rate for youthful offenders. An alternative to formal adjudication in juvenile court, this program serves as an opportunity for youthful offenders to receive constructive restitution and interact with community members. Youth violence is addressed through an interagency partnership that suspends traditional barriers in the community and creates a less threatening environment. By offering programs, opportunities, and services to at-risk youth, this now countywide strategy will document how neighborhood organizations and community groups are working to halt the rising rate of juvenile crime.

Health Care Fraud Investigation and Prosecution Training and Technical Assistance

Grantee: National Association of Attorneys General; Washington, DC

The continuation of this project will enable the National Association of Attorneys General (NAAG) to continue providing national scope training and technical assistance services to State attorneys general and to other State and local agencies involved in detecting, investigating, and prosecuting intrastate health care fraud. NAAG will work with the three BJA-funded demonstration sites to develop prototype strategies for State attorneys general conducting health care fraud prosecutions—including health care consumer fraud, Medicaid fraud, and fraud against traditional insurance companies and health maintenance organizations (HMO's).

NAAG will continue working closely with State attorneys general and district attorneys to provide cost-effective training programs for prosecutors and investigators and to develop innovative prosecution strategies. Special emphasis will be given to assisting the demonstration site units in the Maryland, Minnesota, and Wisconsin Attorneys' General offices. In conjunction with an advisory group comprised of Federal, State, and local prosecutors, the project will identify demonstrably successful initiatives, and disseminate this information via a bimonthly newsletter. The project also will develop and publish a health care fraud practice manual for State prosecutors and develop a clearinghouse of materials relating to the prevention, detection, and prosecution of health care fraud.

DNA Legal Assistance Unit

Grantee: American Prosecutors Research Institute; Alexandria, VA

Beginning in FY 1995 with substantial support from BJA, the American Prosecutors Research Institute (APRI) DNA Legal Assistance Unit has been providing direct support to America's prosecutors in the understanding and use of DNA typing technology to

investigate and prosecute serious cases such as capital murder, homicide, sexual assault, and child abuse. APRI has accomplished this task by providing technical assistance, publications, and training. Technical assistance activities include formulation of a comprehensive guide for direct and cross examination in DNA cases; development of a curriculum for training DNA analysts and examiners on the proper presentation of DNA evidence, emphasizing testimony and etiquette; and publication on a semiannual basis of The Silent Witness, a newsletter that bridges the gap between prosecutors and DNA laboratories. Technical assistance activities will be provided on a limited basis and will include responding to telephone requests, providing general and specific case information packets, and updating the Unit's extensive files of legal and scientific information.

Adjudication Focus Group

In March 1996, BJA conducted an adjudication focus group whose primary purpose was to identify and deliberate issues and problems within the adjudicative process of State and local criminal justice systems. This focus group did generate and discuss innovative programs and new approaches related to improving the adjudicative process. Criminal justice researchers and writers, Byrne Formula Grant Program State administrators, representatives from State and local prosecutor and public defender offices, justices and judges, parole and probation officers, and the funding community all contributed to increasing the quality and quantity of future BJA adjudication training, technical assistance, and demonstration programs.

Later this year, BJA expects to issue one or more Requests for Proposal soliciting proposals from State and local adjudication components and/or private nonprofit organizations to implement one or more program ideas promulgated by this focus group.

Corrections

Correctional Options—National Dissemination

The 1990 Amendments to the Crime Control Act provided BJA with the statutory authority to establish a comprehensive assistance program to develop ''correctional options'' at the State and local levels. In exercising this authority, BJA awards demonstration grants, provides technical assistance, and evaluates the results of intervention projects for youthful offenders likely to become career criminals.

BJA's correctional options projects assist offenders in pursuing a lawful and productive transition to the community following release by providing security, discipline, and comprehensive services, including diagnosis, counseling, substance abuse treatment, education, job training, and placement assistance while under correctional supervision; and linkage to similar services in the community. These projects also provide work opportunities to promote the development of industrial and service skills.

The expected results of the correctional options projects include reduced criminal recidivism of offenders who receive alternative punishments and, in the longer term, reduced costs in correctional services and facilities.

For the purposes of this program, the term ''correctional options'' includes community-based incarceration, weekend incarceration, correctional boot camps, transitional programs, aftercare services, day reporting, structured fines, electronic monitoring, intensive probation, and other innovative sanctions designed to have maximum impact on offenders capable of being managed in an environment other than a traditional correctional facility.

During a 4-year period, from FY 1992 through FY 1995, BJA awarded more than $40 million in Correctional Options Discretionary Program grants to public agencies and private nonprofit organizations. These grants were awarded to support the planning, development, implementation, and evaluation of demonstration projects to test a broad range of alternatives to traditional modes of incarceration. All BJA correctional options demonstration projects have four basic goals: reduced incarceration costs, relief of prison and jail crowding, reduced recidivism rates for youthful offenders, and advancement in correctional practices.

BJA has worked closely with State and local criminal justice professionals in project planning, design, and operation; coordination of technical assistance and evaluation services; monitoring of operations and outcomes; and facilitation of project refinement and improvements. A critical factor in measuring the outcomes of these projects has been the degree to which demonstration sites have been successful in selecting offenders who would have been incarcerated had the correctional options projects not existed.

Preliminary findings from the evaluation of these projects indicate that offenders admitted to these programs pose considerable challenges to treatment efforts because of their young age, lack of education, poor job skills, low rates of employment, lack of social stability, history of drug abuse, and extensive record of prior arrests and convictions.

However, these projects are successful in delivering badly needed services to a high-risk offender population, offering far more services and supervision than normally are provided for similarly situated offenders who are in prison or who are assigned to probation or parole.

States like Florida, Maryland, New Hampshire, and Vermont have succeeded in reaching their goal of cost effectiveness by targeting offenders who otherwise would have spent a considerable amount of time in custody.

Model Correctional Options Projects

The following projects have been selected as BJA correctional options models and will serve as resource sites for a National Correctional Options Dissemination, Training, and Technical Assistance Program:

Washington State Reintegration of Youthful Offenders
Maricopa County (AZ) Youthful Offenders Project
Bradenton (FL) Correctional Treatment Facility Drug Punishment Program
Maryland Community Supervision and Transitional Services
New Hampshire Intensive Correctional Services
Vermont Restorative Justice Services
Connecticut Female Addictive Services—Fresh Start
California Youth Authority Project LEAD
Riverside County (CA) Twin Pines Academy

Focus Group: Linking Byrne Formula and Discretionary Grant Programs

A recent analysis of the annual needs assessments conducted through the Byrne Formula Grant Program indicated that the two areas of greatest need at the State and local levels are alternatives to incarceration and offender treatment services.

In December 1995, BJA convened a focus group meeting with representatives from a number of successful State and local correctional options projects and from the State Administrative Agency for the Byrne Formula Grant Program in these same jurisdictions. The purpose was to obtain ideas and insights regarding the development of a Correctional Options Dissemination Program for the FY 1996 Byrne Discretionary Program Plan; as well as potential funding through the Byrne Formula Grant Program and other

public and private funding sources to support State and local correctional options.

The FY 1996 National Technical Assistance and Dissemination Initiative for Correctional Options will build on the input from the planning meeting and will encourage States to support new correctional options projects with Byrne formula grants and to use these Byrne formula funds to leverage additional funding sources.

FY 1996 Awards

Technical Assistance, Dissemination, and Training To Promote Correctional Options

Grantee: Criminal Justice Associates; Philadelphia, PA

This continuation of the current award will support the technical assistance needs of the ongoing correctional options projects: the 9 demonstration projects that were awarded on September 30, 1995; the 10 projects that BJA considers models; and the FY 1994 awards to Wilmington, Delaware, and Washington, D.C.

The continuation award will also support a national dissemination and technical assistance initiative that builds upon the lessons learned through the BJA Correctional Options Program regarding project planning, development, implementation, and evaluation. The initiative will support efforts to use Byrne Formula Grant Program funds and other public and private funding sources to support the implementation of Correctional Options projects at the State and local levels. The grantee will work closely with the program evaluator and will assist in the dissemination of information to key decisionmakers who can influence the development and funding of correctional options at the State and local levels. The award also will support the involvement of a consortium of service providers.

Impact Evaluation of 10 Demonstration Sites

Grantee: The National Council on Crime and Delinquency; Washington, DC

This is a 15-month continuation award focusing on outcome measures and publications regarding the cost effectiveness of selected correctional options projects, as compared with traditional incarceration. The evaluation will be interactive with both the demonstration sites and the technical assistance providers, it will include feasibility assessment activities to determine the evaluability of project design and, as appropriate, technical advice on project adjustments to improve operations and outcomes.

In addition to the dissemination of correctional options, BJA will continue to expand its support for programs that demonstrate productive work and employment preparedness services for prison and jail inmates, offenders participating in community-based correctional options programs, and ex-offenders.

Prison Industry Enhancement Technical Assistance

Grantee: Correctional Industries Association; Philadelphia, PA

This continuation award will enable BJA to maintain the current level of effort regarding Prison Industry Enhancement (PIE) technical assistance, training, and annual program audits. In addition, the award will support the development of revised PIE regulations and guidelines, extension of single PIE certification authority to encompass all State prisons and local jails, two annual meetings, and the development of marketing plans to promote expansion in the number of active PIE projects.

Jail Work and Industries

Grantee: Community Resource Services; Gaithersburg, MD

This continuation award will enable BJA to continue providing technical assistance and program planning support to reduce inmate idleness through the development of productive work opportunities in local jails, including Prison Industry Enhancement (PIE)-certified private sector employment.

Project Return

Grantee: Tulane University; New Orleans, LA

With strong support from the New Orleans Business Council, Project Return provides employment readiness training and support services to ex-offenders. Drug and alcohol counseling, remedial education, life skills training, vocational training, job placement services, and family counseling are provided to 200 participants per year.

Opportunity To Succeed Program: Center on Addiction and Substance Abuse

Grantee: Columbia University; New York, NY

The Opportunity to Succeed (OPTS) program provides intensive services for addicted ex-offenders who received drug treatment while incarcerated and are returning on probation or parole to their communities in Kansas City, St. Louis, Tampa, Oakland, and New York City. The program goal is to sustain treatment gains and achieve a positive reintegration into the community by providing substance abuse treatment, case management, employment, and training, housing, family intervention, health services, and mental health services. Services are structured, coordinated, and monitored by case managers working for community based organizations.

Evaluation, Systems Improvement, and Information Dissemination

The Denial of Federal Benefits Program

Contractor: Network Systems Integration; Washington, DC

The Denial of Federal Benefits Program was established to implement Section 5301 of the Anti-Drug Abuse Act of 1988 (Subpart G of Public Law 100–690). This law offers an option to judges in both Federal and State courts to deny Federal benefits to persons convicted of trafficking in or possession of drugs. It also provides for the mandatory denial of Federal benefits to individuals with three or more convictions for trafficking offenses. In February 1993, additional duties were assigned to the Denial of Federal Benefits Program in connection with the implementation of the National Defense Authorization Act of 1993. This law provides for a point of contact—i.e., a clearinghouse—from which defense contractors may learn whether an individual has been disqualified from defense contract participation as a result of a procurement fraud conviction.

The goals of the program are to provide a sentencing option for Federal and State judges to deny a Federal benefit to a drug offender, a mechanism to report such a denial of Federal benefits, and a method to inform Federal agencies of individuals sentenced to a denial of Federal benefits. The program objectives are to enhance the use of denial of Federal benefits as a sanction in sentencing offenders convicted of a drug offense and to enhance BJA's capabilities to more accurately and efficiently collect offender data and improve processing of this data from Federal and State sources.

The Denial of Federal Benefits Program's current operations include an information dissemination component, a systems management component, and a program management and coordination component.

Testing of Nebraska's Victim Services Needs Assessment Instrument

Grantee: Nebraska Commission on Law Enforcement and Criminal Justice; Lincoln, NE

The purpose of the Victim Services Needs Assessment instrument is to assist the Nebraska Commission on Law Enforcement and Criminal Justice in assessing whether crime victim assistance funds are being utilized in the best way possible to address the needs of crime victims. The goals in testing the instrument are to assess the effectiveness and efficiency of existing services and to identify and formally document services not currently available but needed by victims of crime in Nebraska.

The instrument consists of three sections. Section 1, the Nebraska Victimization Survey, is a statewide victimization instrument designed to determine geographical service gaps and awareness of crime victim services and evaluate attitudes toward crime and the criminal justice system. The second section, the Inventory of Victim Assistance Programs In Nebraska, is completed by victim assistance agencies and identifies how the agency is funded, who represents its client base, what services are provided, and what services are needed. Section 3, the Victim Assistance Client Survey, is given to the crime victim and identifies the types of services provided by the agency; the level of satisfaction with services provided; the types of services the victim felt were needed but were not provided; and if the victims used other agencies for services.

The instrument is service specific; it is designated to be used by States and local agencies. Once the instrument is tested and finalized, it will be made available to other States for their use. The Office of Victims of Crime will oversee instrument refinement.

An Initiative To Develop Model Internet Applications for State and Local Criminal Justice Agencies

Grantee: Illinois Criminal Justice Information Authority; Chicago, IL

This initiative is being developed by the Illinois Criminal Justice Information Authority (ICJIA) and the University of Illinois at Chicago. The purpose is to develop model Internet applications that will allow State and local criminal justice agency users to access information about programs and resources that are available to combat crime and violence. The goals of the initiative are to develop model Internet applications in the State and local criminal justice community for the electronic sharing and publishing of criminal justice data and information.

The initiative involves information technology, data and statistics, program development, and research and evaluation. ICJIA enlisted BJA, the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS) to review and collaborate on the proposal and determine its utility to State and local criminal justice agencies. To ensure that the ICJIA's work is responsive to the needs of State and local agencies across the country, SEARCH Group, Inc., the National Criminal Justice Association, Justice Research Statistics Association, BJA, NIJ, and BJS all will consult on this initiative.

U.S. Department of Justice Response Center and BJA Clearinghouse

Contractor: Aspen Systems, Inc.

The BJA Clearinghouse continues to serve as an information and dissemination source for the criminal justice field. BJA also supports the U.S. Department of Justice (DOJ) Response Center, which provides timely and accurate information on DOJ initiatives.

Report Publication and Dissemination

This initiative enables BJA to produce and disseminate information to the criminal justice field about state-of-the-art programs and activities, and to improve the criminal justice system through development of publications and other media materials.

State and Local Training and Technical Assistance Program

Contractor: Community Research Associates; Nashville, TN

The purpose of the BJA State and Local Training and Technical Assistance Program is to provide training and technical assistance to States, units of local government, and recognized Native American Indian Tribes in the development and implementation of comprehensive systemwide strategies for preventing and combating drug-related and violent crime, and in the improvement of the function of State and local criminal justice systems. Although developed primarily to support BJA's Formula Grant Program, training and technical assistance can also be extended to BJA discretionary grantees and, in certain instances, to other facets of the U.S. Department of Justice (e.g., in response to requests from U.S. Attorneys).

Evaluation Program

The goal of BJA's Evaluation component is to identify criminal justice programs of proven effectiveness and to disseminate information about these programs, so that other jurisdictions throughout the country can replicate them. Results of BJA program evaluations guide the formulation of policy and programs within Federal, State, and local criminal justice agencies. BJA coordinates the development of evaluation guidelines with the National Institute of Justice (NIJ). In addition, NIJ conducts comprehensive evaluations of selected programs receiving discretionary and formula grant funds from BJA.

Each applicant for State Byrne Formula Grant Program funds is required to include in its project plan an evaluation component that meets the BJA/NIJ evaluation guidelines. Each State is required to provide BJA with an annual report that includes a summary of its grant activities and an assessment of the impact of these programs on the needs identified in its statewide drug and violent crime control strategy. Applicants for Byrne Discretionary Grant Program funding are required to include an evaluation component in their applications and agree to conduct required evaluations according to procedures and terms established by BJA.

SEARCH National Training and Technical Assistance Program

Grantee: SEARCH Group, Inc. (National Consortium for Justice Information and Statistics); Sacramento, CA

The SEARCH National Training and Technical Assistance Program, created in 1986, offers assistance to criminal justice agencies across the country in the development, improvement, acquisition, and/or integration of their computer systems (e.g., records and case management, computer-aided dispatch, and criminal history records systems). SEARCH provides onsite, no-cost training and technical assistance to justice agencies. It also offers services at the National Criminal Justice Computer Laboratory and Training Center located in Sacramento, California.

Public Safety Support Services: National Training and Technical Assistance for Law Enforcement Line of Duty Deaths

Grantee: Concerns of Police Survivors, Inc.; Camdenton, MO

The Public Safety Officers' Benefits Act (42 U.S.C. 3796 et seq.) authorizes the Director of BJA to support national programs that assist families of public safety officers killed in the line of duty. Since 1984, Concerns of Police Survivors, Inc. (COPS) has implemented programs to provide psychological support and practical guidance to law enforcement agencies and families that have lost an officer in the line of duty.

BJA has identified the need to: update research on law enforcement agencies' readiness to handle line-of-duty deaths; provide training and technical

assistance to better prepare law enforcement agencies to intervene effectively with families and coworkers of officers killed in the line of duty; and increase dissemination of information about the services and benefits available to the families of fallen officers and about the resources available to assist agencies.

BJA will survey law enforcement agencies regarding their written policies and procedures on responding to line-of-duty deaths. In addition, input and reaction will be sought from surviving family members concerning the treatment accorded them by the deceased family member's agency. The survey will provide some measure of the impact BJA and other organizations have had over the past 11 years in improving agency response to line-of-duty deaths.

National Institute of Justice Research Plan 1995–1996

For substantive questions regarding specific Goals, please contact the appropriate Program Manager. Names and telephone numbers of all Program Managers are listed at the end of each Goal. For general NIJ information, contact Carrie Smith, at (202) 616–3233.

For information about the Violent Crime Control and Law Enforcement Act of 1994 (Crime Law), contact the Department of Justice Response Center, at (202) 307–1743 or (800) 421–6770.

To inquire about NIJ receipt of applications, contact Louise Loften, at (202) 307–2965.

For document publication information, contact Mary Graham, at (202) 514–6207. For general information about NIJ programs and funding opportunities, and application procedures; for requests for reprints, literature, final reports, funded grants on related topics, etc.; for names of researchers or practitioners working on related topics, contact the National Criminal Justice Reference Service (NCJRS), at (800) 851–3420.

The NIJ 1995–96 Research Plan is also available electronically via the National Criminal Justice Reference Service Bulletin Board System. You can access the Bulletin Board through the Internet (telnet to ncjrsbbs.aspensys.com or gopher to ncjrs.aspensys.com 71) or through a modem (set at 9600 baud and 8–N–1; dial 301–738–8895). The NIJ Research Plan is listed under the ''National Institute of Justice Information'' menu.

For Internet access information, e-mail lively@justice.usdoj.gov.

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Introduction

The National Institute of Justice (NIJ) is the research and development agency of the U.S. Department of Justice. Created in 1968 by Congress pursuant to the Omnibus Crime Control and Safe Streets Act, the Institute is authorized to:

Sponsor research and development to improve and strengthen the Nation's system of justice with a balanced program of basic and applied research.

Evaluate the effectiveness of criminal justice and law enforcement programs and identify those that merit application elsewhere.

Support technological advances applicable to criminal justice.

Test and demonstrate new and improved approaches to strengthen the justice system.

Disseminate information from research, development, demonstrations, and evaluations.

This Plan signals the new administrative direction that NIJ will follow to achieve its research and evaluation goals. Conceptually, the Plan is the basis of NIJ's pyramid of research. It will be supplemented over the coming months by a series of solicitations on topics that speak to current or persistent policy concerns that warrant research investments. By their nature, those solicitations will represent a somewhat more focused part of this pyramid. Intramural studies are at the apex of the research pyramid. Questions with strong policy orientation or immediate concern may best be addressed by NIJ staff who can interact directly with the policymakers asking the questions.

Readers of prior NIJ Plans will find that this Plan has been substantially shortened. Much of the traditional background text has been discarded; suggested research topics have been reduced from paragraphs to phrases. This change in style, however, implies no change in the kinds of research being sought. NIJ believes that this abbreviated format is more consistent with the spirit and intent of the Plan as a vehicle to encourage the field to submit original ideas on a wide range of research issues.

Focused solicitations will appear intermittently over the next year. These will address more specific topics for which special funding is available. Certain activities funded under the Violent Crime Control and Law Enforcement Act of 1994 (Crime Law) will be focal points—specifically, community policing, violence against women, boot camps, and drug courts—as will evaluations of selected Bureau of Justice Assistance programs. NIJ will also initiate solicitations in collaborative arrangements with other Federal agencies, as well as for topics that NIJ believes merit special attention for the development of knowledge. These solicitations will be announced through the Federal Register and other NIJ communications channels including the Internet (the Department of Justice and NCJRS Online) and special mailings. Interested applicants should telephone the National Criminal Justice Reference Service (NCJRS) at 800–851–3420 or e-mail askncjrs@ncjrs.aspensys.com for pending releases and dates of announcement.

Partnerships are another new priority for the Institute. NIJ believes that many of today's crime problems require solutions that extend beyond criminal justice boundaries. The Institute has been active in discussions with other Federal agencies and private foundations and has established a variety of collaborative relationships. Some of these will manifest themselves in the form of special solicitations on specific topics or programs. Others will simply encourage collaborative or interdisciplinary research and offer the prospect of joint funding. Still others will result in the development of shared research agendas. NIJ encourages researchers from all disciplines to explore the opportunities for collaborative efforts presented in this Plan and subsequent announcements, and to propose arrangements that they are able to construct beyond those mentioned. NIJ particularly encourages coordination of research applications with submissions in other OJP agency Plans.

An organizational change has also occurred. The factors that distinguish ''research'' from ''evaluation'' are subtle and secondary to the substance of the issues. Therefore, the Institute has merged these functions into a single Office of Research and Evaluation that will review submissions for both areas. The Plan invites proposals for a range of funding amounts. It includes a category of small grants (less than $50,000) across all goals and subjects. Readers should consult the administrative sections of the Research Plan for additional information on the differences in application requirements.

Six Strategic Long-Range Goals

In FY 1993, the Institute set forth six long-range goals as the focus of NIJ research, evaluation, and development in the coming years. The creation of this long-range agenda was well received; a large number of research and evaluation proposals were submitted, providing an interdisciplinary framework for 1994.

In this 1995–96 Research Plan, the Institute specifies the research, evaluation, and technology projects that NIJ anticipates supporting under each goal. The numeric order of the goals does not indicate levels of priority for the Institute.

Many of the special grant programs for individuals—such as the Data Resources Program, various Fellowship programs, the NIJ Internship Program—are now described in a separate publication, which will be announced in the Federal Register.

NIJ solicits research and evaluations to develop knowledge that will further these long-range goals:

I. Reduce violent crime.

II. Reduce drug- and alcohol-related crime.

III. Reduce the consequences of crime.

IV. Improve the effectiveness of crime prevention programs.

V. Improve law enforcement and the criminal justice system.

VI. Develop new technology for law enforcement and the criminal justice system.

Studies that involve the use of randomized experimental designs are encouraged, as are multiple strategies for data collection, and well-controlled, quasi-experimental designs and equivalent comparison group designs. Qualitative studies, including ethnographic data collection, are also encouraged.

Research Collaborations

NIJ encourages joint research and evaluation projects with other Federal agencies and private foundations interested in crime and criminal justice issues. Applicants may wish to consider whether their proposed project might lend itself to joint funding with another agency or foundation. Applicants interested in exploring possible partnerships should contact the potential partner agency directly, or the relevant NIJ program manager, to discuss specific topics for possible collaborative projects. NIJ has entered into memorandums of agreement or is in other ways collaborating with the Departments of Defense, Education, Energy, Health and Human Services, Housing and Urban Development, and Treasury. Agencies and foundations that have indicated a desire to collaborate with NIJ on projects of mutual interest, or are currently involved in joint research efforts with NIJ, include:

Agencies

Advanced Research Projects Agency (DOD)
Bureau of Alcohol, Tobacco, and Firearms
Bureau of Justice Assistance
Centers for Disease Control and Prevention
Center for Mental Health Services
Center for Substance Abuse Treatment
Corrections Program Office (OJP)
Drug Courts Program Office (OJP)
National Aeronautics and Space Administration
National Institute of Mental Health
National Institute on Alcohol Abuse and Alcoholism
National Institute of Corrections
National Institute on Drug Abuse
National Science Foundation
Office of Community-Oriented Policing Services (DOJ)
Office of Juvenile Justice and Delinquency Prevention
Office of Assistant Secretary for Planning and Evaluation (HUD)
Office of National Drug Control Policy
Office for Victims of Crime
State Justice Institute
Violence Against Women Program Office (OJP)

Foundations

The Annie E. Casey Foundation
The Carnegie Corporation of New York
The Ford Foundation
The Daniel and Florence Guggenheim Foundation
The J.C. Kellogg Foundation
The John D. and Catherine T. MacArthur Foundation
The Pew Charitable Trusts
The Prudential Foundation
The Ronald McDonald Foundation
The Rockefeller Foundation

The Institute cannot guarantee that joint funding for research and

evaluation projects will be forthcoming from these sources. Applicants should consider whether their proposals are in accord with the goals of these agencies and private foundations.

Specific information about applying for Institute grants is contained in the section ''Administrative Guidelines.''

Goal I: Reduce Violent Crime

Purpose

The purpose of this solicitation is to encourage research and evaluation projects spanning six broad areas: family violence, violence against women, homicide, firearms and violence, gangs, and juvenile violence. Through this solicitation the National Institute of Justice (NIJ) expects to support research that will improve the criminal justice knowledge base on crimes and criminal behavior that increasingly concern the public.

Background

Violent crime is a leading concern among the American public today. According to the National Crime Victimization Survey (NCVS), in 1992 there were 6.6 million violent victimizations in the United States—including 141,000 rapes, 1.2 million robberies, and 5.3 million assaults. The violent crime rate is steadily increasing, especially among juveniles, and in 1992 was the highest ever recorded for blacks; homicide is now the leading cause of death for young black males.

Handguns are a major factor in the increasing violence, especially in the commission of homicide. Of the 23,760 murders reported to the FBI in 1992, handguns were used in 55 percent. One of the most critical issues in any consideration of ways to reduce violence and its consequences is the role firearms play in contributing to violent crime, serious injury, and death. The NCVS estimates the rate of nonfatal handgun victimizations in 1992 at 4.5 crimes per 1,000 persons aged 12 or older—the highest such figure on record. Findings from an NIJ and Office of Juvenile Justice and Delinquency Prevention (OJJDP) study of incarcerated juveniles and inner-city high school students showed that 83 percent of inmates and 22 percent of students had possessed guns, with 55 percent and 12 percent respectively having carried guns all or most of the time.

Between 1988 and 1992, arrests of juveniles for violent crimes increased by 47 percent—more than double the increase for persons 18 years of age or older. Over the same period, juvenile arrests for homicide increased by 51 percent and statistics on weapons law violations indicate that juvenile use of guns has increased dramatically.

Spousal abuse commonly comes to mind when violence against women is discussed, but violence against women is much broader. According to the NCVS, more than 2.5 million women experience violence each year; nearly two in three female victims of violence were related to or knew their attacker; about a third were injured as a result of the crime; nearly half the victims of rape believed the offender to have been under the influence of drugs or alcohol at the time of the attack. The issue has emerged as a topic of national interest and led to the inclusion of the Violence Against Women Act (VAWA) in the 1994 Crime Law.

The Crime Law contains many other provisions directed toward the prevention, control, and reduction of violent crimes—enhancements for law enforcement, correctional facilities, and drug treatment options; restrictions on firearms; provisions to deal with juvenile crime and gangs; and increases in the programs and research about family violence as well as violence against women.

Through this general solicitation NIJ encourages studies that will address these areas of broad general concern and that examine the specific priorities identified in the 1994 Crime Law, particularly with regard to violence among juveniles and the illegal possession and use of firearms. The Institute is especially interested in filling critical gaps in current knowledge and identifying and evaluating existing programs of crime prevention and control.

Research Areas of Interest

Listed below are examples of research areas that could advance criminal justice knowledge and practice under Goal I of the NIJ Research Plan. Individuals are encouraged to suggest their own topics of interest. Research is encouraged in, but not limited to, the following areas:

Studies of Offenders and Offenses. Criminal careers of offenders who engage in violent crime, including risk and protective factors, and initiation, frequency, and termination patterns. Studies of specific offenses and offenders, including robbery, sexual assault, child sexual assault, stalking, and homicide. Offender perceptions of criminal justice response to violent offenders. Juvenile violence, including escalation patterns, racial conflicts, and influence of peers and gangs. Family violence involving intimate partners, spouses, children, and elders.

Violent Situations. Role of gangs and group offending in criminal violence. Studies of patterns in violent events, including triggering events, situational elements, and predisposing influences. Protective factors in neighborhoods and communities at high risk of violence. Violence in specific situations and locations including schools, families, recreational settings, and the workplace.

Firearms Violence. Adult and juvenile patterns of gun availability, sources of guns, and use in violent crime. Role of illegal markets in weapons on patterns of firearms violence, especially among juveniles. Impact of firearms laws on gun crimes, substitution of other weapons, and offense patterns. Feasibility studies of innovative firearms regulations.

Responses to Violent Offenders. Differentiating system responses to violence from responses to other crimes. Violence prevention. Evaluation of innovative programs and practices. Evidentiary concerns, including uncooperative witnesses. Management of violent offenders on probation and parole including risk assessment, treatment programs, and community supervision.

Family Violence. Improving the criminal justice (police, prosecution, courts) response to family violence. Interdisciplinary research on the origins of spouse assault. Child homicide and fatality review teams. Links between partner abuse and child abuse. Evaluation of innovative programs and practices for responding to elder abuse. Effectiveness of stalking legislation. In addition to family violence research, NIJ also will issue a special solicitation in 1996 requesting evaluations and research of selected topics covered under the Violence Against Women Act.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. To obtain specific information on the programs described under this goal, potential applicants may contact:

Bernard Auchter, (202) 307–0154, for family violence and violence against women. Lois Mock, (202) 307–0693, for firearms violence. Winifred Reed, (202) 307–2952, for gangs. James Trudeau, (202) 307–1355, for studies of offenders and offenses, violent situations, and responses to violent offenders.

Goal II: Reduce Drug- and Alcohol-Related Crime

Purpose

The purpose of this solicitation is to encourage research and evaluation

projects that will improve the criminal justice knowledge base about crimes and criminal behavior involving the use of drugs and alcohol. Through this solicitation NIJ seeks to clarify further the relationship between substance abuse and crime and to reduce drug- and alcohol-related crime.

Background

Substance abuse and drug-related crimes continue to affect the lives of countless Americans residing in both urban and rural neighborhoods across the Nation. NIJ's Drug Use Forecasting (DUF) data show an increase in marijuana use and relatively stable but high levels of major addictive substance use among booked arrestees in the 23 urban areas monitored by DUF. Recent data from the Drug Abuse Warning Network (DAWN) indicate that the use of heroin and cocaine is on the rise. Efforts to prevent and reduce drug-related crime, and thereby improve the quality of life in these areas, continue to occupy the criminal justice community.

Alcohol is used by both offenders and victims in a significant proportion of violent events, with documented connections between both situational and chronic drinking and aggressive or violent behavior. The National Academy of Sciences Panel on the Understanding and Control of Violent Behavior has called for more research into the role of alcohol in promoting violent events, particularly since little is known about how alcohol and violence may reinforce one another or how the alcohol-violence relationship may vary depending on type of violence.

The criminal justice system is the largest single source of external pressure influencing abusers who otherwise would not enter substance abuse treatment programs. Half or more of the admissions to community-based residential and outpatient substance abuse treatment programs are offenders on probation or parole. Criminal justice referral to treatment relieves courts and prisons of overcrowding and reduces the high cost of continued incarceration, while providing an added degree of supervision beyond what probation or parole offices may be able to afford. When successful, treatment further reduces criminal justice costs by breaking the pattern of recidivism that brings typical substance abusers back into the criminal justice system again and again.

Research on criminal justice-involved populations suggests that substance abuse treatment can be effective in reducing substance abuse and criminal activity while the client is in treatment and for some time thereafter. As substance abuse programs are implemented, it is important to provide critical feedback on how they are working and for whom they are most effective. It is also important to determine how best to provide treatment—through public criminal justice agencies or through private treatment agencies under contract.

Substance abuse prevention programs continue to proliferate in response to public concerns. Comprehensive substance abuse programs for youths can promote anti-drug social norms and thereby reduce or prevent the use of cigarettes, alcohol, marijuana, heroin, and cocaine. NIJ seeks to evaluate comprehensive community-based substance abuse programs that develop partnerships among criminal justice and schools, health centers, families, peers, and media. NIJ's Drug Use Forecasting (DUF) program gathers offense and drug use information from samples of adult and juvenile arrestees at 23 sites nationwide, providing access to a national sample of arrestees within hours of arrest. Along with a brief, voluntary interview, urine specimens are obtained to test for evidence of recent use of drugs. For 7 years, data from NIJ's DUF program have traced the trends in drug use among persons arrested for a wide range of offenses. In 1995, NIJ began soliciting proposals that capitalized and expanded upon the research potential provided through the DUF program's quarterly collection of interviews and urine specimens from samples of adult and juvenile arrestees brought to jails in 23 cities nationwide.

Researchers are encouraged to develop proposals that present innovative ways of utilizing the DUF program as a research ''platform'' for pursuing a wide range of hypotheses related to drug use and criminal activity. For instance, in collaboration with existing DUF sites, the basic data collection protocol could be supplemented with additional interview assessments or bio-assays. NIJ is also interested in proposals that examine specific research questions by applying the DUF protocol to targeted samples of arrestees such as those in suburban or rural jails, or those arrested for specific offenses.

Research Areas of Interest

Listed below are examples of research areas that could advance criminal justice knowledge and practices under Goal II of the NIJ Research Plan. Individuals are encouraged to suggest their own topics of interest. Research is encouraged in, but not limited to, the following areas:

Substance Abuse and Criminal Behavior. Relationships between drugs, alcohol, and violence, including the individual and environmental circumstances. Relationship between substance abuse and related criminal behavior of all types, including family violence. Understanding substance abuse careers and how they track with criminal careers over time. Inventory of the validity, scope, and gaps in current substance abuse data sets.

Substance Abusing Offenders and the Criminal Justice System. Impact of pretrial services, adjudication, sentencing, and corrections (including community corrections) programs. Effect of strategies implemented in one segment of the system on the rest of the system. Offender attitudes, perceptions, and experiences as they move through particular components/programs. Effective use of a series of graduated sanctions for noncompliance behaviors.

Substance Abuse Prevention. Cost benefit analyses. Impact of criminal justice-based strategies on later substance abuse and other related criminal behavior. Development and identification of demand-reduction strategies and programs for high-risk populations.

Treatment and Aftercare Evaluations. Assessment of treatment drop-outs. Determination of the optimal mix of various treatment and after-care components for various criminal justice populations.

Drug Use Forecasting (DUF) Research Platform Initiatives. Expansion of adult and juvenile research protocols to address additional research questions such as drug market analysis, drug treatment history of arrestees, the onset of drug use among arrestees, the relationship between drug acquisition and other criminal activities, and the role of alcohol and drug consumption in the commission of crimes.

Drug Enforcement. Research on the effectiveness of interdiction efforts and control strategies such as increased penalties for drug trafficking in prisons and drug dealing in drug-free school zones.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. To obtain specific information on the programs described under this goal, potential applicants may contact: Laurie Bright, (202) 616–3624, for substance abuse research and evaluations related to the criminal justice system. Thomas E. Feucht, (202) 307–2949, for substance abuse research related to DUF research

platform initiatives. James Trudeau, (202) 307–1355, for substance abuse research related to criminal behavior.

Goal III: Reduce The Consequences of Crime

Purpose

The purpose of this solicitation is to encourage research and evaluation projects that explore the causes of victimizations, their consequences in injury, fear, property damage, and other forms of cost; and the institutional responses of criminal justice agencies to victims. In addition to individual victims, the Institute is interested in the ways that households, organizations, and communities become victims, and how victimizations harm and otherwise alter daily functioning. NIJ is also interested in how victim service institutions can best serve victims to reduce the harm done. The goals of the research solicited are to understand how natural circumstances can lead to victimizations, as well as the nature and extent of harm caused by crime, and to use these findings to reduce both victimization risk and severity.

Background

The extent of criminal victimization within the United States is disturbing: In 1992, approximately 1 in every 4 households was victimized by 1 or more crimes, and 1 in 20 had at least one member age 12 or older who was the victim of a violent crime. Violent crime victimization rates, after declining through most of the 1980's, have again begun to increase, most notably among blacks and persons ages 12–24.

National public opinion surveys consistently indicate that crime has displaced other issues as the Nation's most serious concern. In a 1994 New York Times/CBS News nationwide telephone poll, 23 percent of respondents listed crime as ''the most important problem facing this country today,'' and 40 percent said they live within a mile of an area where they would be afraid to walk alone at night. The harm of victimization includes injury, dollar loss, and a pervasive sense of insecurity that disrupts and truncates the victim's daily activities and satisfactions. This harm also touches those close to or acquainted with the victim. The victim's needs are imperfectly understood by researchers and practitioners and are inadequately responded to by available programs of assistance. The victim's dealings with the criminal justice system often compound the damage rather than serving to restore the victim and create a sense of justice.

We are limited in our understanding of the antecedents and causes of victimization. ''Routine activities'' research—that includes the victim along with the offender, environment, and ''guardians'' has the potential to improve the validity and effectiveness of crime prevention programs. Such research might examine specific types of victims, specific activity domains, or specific locations. A special emphasis might be topics suggested by the Violence Against Women Act, which is discussed in Goal I.

The effects of crime reach far beyond their impact on individuals and households, extending into businesses, public housing areas, neighborhoods, and ultimately into entire communities. Within the community, violent crime, gangs and the threat they pose, vandalism, drugs, and disorder may cause businesses to close or relocate, reduce employment and shopping opportunities, and decrease property values. Where this grim process is not interrupted, urban neighborhoods and communities decay, investments dwindle or disappear, and law-abiding residents and their organizations move out.

Crimes against business range from the armed robbery of a neighborhood grocery to the electronic swindle of an international corporation and include such offenses as the theft of cash or property (by customers, employees, and suppliers), burglary, vandalism, billing scams, embezzlement, extortion, computer hacking, hijacking of shipments, kidnaping, arson, and theft of intellectual property. The cost of crime to business is, of course, ultimately borne by consumers, employees, and residents of areas that experience a decline because of crime's effect on local business.

Through this general solicitation NIJ encourages studies that will address these critical areas of citizen concern. The Institute is particularly interested in research that advances our knowledge of the extent and consequences of criminal victimization in the following areas: assessing the harm caused by victimization, improving the delivery of services to victims and their treatment by the criminal justice system, increasing our understanding of the causes and means of prevention of victimization, improving data about the victimization of businesses, and the effects of crime and victimization on the delivery of services in affected areas.

Research Areas of Interest

Listed below are examples of research topics that will advance criminal justice knowledge of the extent, causes, and consequences of criminal victimization under Goal III of the NIJ Research Plan. Individuals are encouraged to suggest their own topics of interest. Research is encouraged in, but not limited to, the following areas:

Assessing Victim Needs. Diagnostic instruments for use by victim services providers that would assist staff intake assessment of victim harm and required services. Victim-based evaluations of services.

Program Evaluations. Evaluations of victim services programs in such areas as restorative justice, use of computers by victim services, incorporation of victim services in community policing, programs tailored to victims with special needs, including child victims, and local program compliance with victim services mandated by State legislation.

Criminal Justice System Response to Victims. How treatment of victims and witnesses by the criminal justice system affects the public's willingness to cooperate with the system at all stages of its processes.

Victimization Patterns. How routine activities, behavior, perceptions, and knowledge interact with situational variables and offender behavior to increase or lower the risk of victimization. Knowledge that can contribute to reducing the level of victimization.

Impact of Crime on Business. The quality of data on the costs of victimization of business, its customers, suppliers, and employees, and the community. Priorities for new data collection and the utility of the data for combating crimes against business.

Impact of Crime on Service Delivery. Effects of fear of crime and victimization on the ability of communities, public agencies, and nonprofit organizations to provide services and meet the needs of residents of affected neighborhoods.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. To obtain specific information on the programs described under this goal, potential applicants may contact Richard Titus, at (202) 307–0695.

Goal IV: Improve the Effectiveness of Crime Prevention Programs

Purpose

The purpose of this solicitation is to encourage research and evaluation projects that will increase the safety of individuals within families, and in schools, businesses, workplaces, and

community environments; that will advance the knowledge of criminal justice practitioners and help prevent crime and criminal behavior, and develop and improve crime prevention programs. NIJ seeks research and evaluations aimed at preventing involvement in crime, and individual, community, and workplace efforts to improve safety and security.

Background

Crime prevention takes many forms. NIJ research in crime prevention continues to focus on potential offenders, potential victims, and particular locations and emphasizes both individual and community responses to crimes that occur in various settings. There is a need to examine how certain characteristics of neighborhoods, households, schools, businesses, public housing developments, parks and other public areas promote or constrain criminal activity. It is equally important to study populations that may be especially vulnerable, or invulnerable, to crime in those locations. It is also important to examine crime prevention programs and strategies in the context of the communities and jurisdictions in which they are found.

Crime prevention can and should focus on deterring potential offenders by formulating strategies directed at high-risk groups that are likely to become involved with the criminal justice system. NIJ research emphasizes prevention strategies that may influence the attitudes and behaviors of persons living in high-risk environments by addressing their needs in a comprehensive manner and by promoting positive and constructive forms of behavior. This approach to crime prevention requires the coordination of mutually reinforcing efforts that involve the family, school, and community as crime prevention agents. Research has shown that efforts to assist youths at risk are more likely to be effective when they start early and provide forms of intervention based on an understanding of the developmental processes that influence the attitudes and behavior of youths over time.

Crime prevention programs can also focus on potential victims of crime and ways to prevent their victimization. A major issue in prevention research is how to influence the behavior of individuals, households, organizations, and community groups. Lessons learned in studies of citizen patrols, changes in physical design, the relationship between fear and physical signs of disorder, and the redeployment of police officers, have all been incorporated in national crime prevention campaigns and in the development of programs and strategies designed to reduce crime victimization. Citizens and community groups can accept and respond to the challenge of shared responsibility for community security. Diverse crime prevention efforts undertaken include means of preventing victimization as well as ways of addressing the personal and social needs of victims resulting from crime and drug abuse. In addition, citizen and community anti-crime efforts are more likely to be effective when they are part of a comprehensive approach to neighborhood problem solving that involves citizens in a partnership with police and other municipal agencies.

We have learned that crime can be reduced through the proper design and effective use of environmental crime prevention methods in commercial sites, public and private housing, recreational areas, and transportation systems. Research has underscored the importance of incorporating environmental strategies as key components of community crime prevention programs.

One possible way to protect people from crime is to develop a more thorough understanding of such factors about offenders as how they select their victims and targets; their modus operandi during the commission of an offense, including any involvement with co-offenders; their methods of disposing of noncash proceeds from crime; their perceptions of the opportunity structure of different locations, environments, and situations; and their perceptions of the criminal justice system's effectiveness in apprehending and prosecuting them.

Research Areas of Interest

Listed below are examples of research areas that could advance crime prevention knowledge and practice under Goal IV of the NIJ Research Plan. Individuals are encouraged to suggest their own topics of interest. Research is encouraged in, but not limited to, the following areas:

Crime Prevention Programs for High-Risk Youths. (In coordination with the Office of Juvenile Justice and Delinquency Prevention). Development of methods that foster positive and constructive forms of behavior. Focus on resilient youth and families. Interaction between community, family and individual factors in promoting positive behavior.

Developing Community-Based Crime Prevention Partnerships. Identification of factors that enhance or diminish partnerships. Development and testing of strategies to revitalize and reclaim high-crime areas. Ways to organize community resources in an integrated manner. How to develop useful problem-solving strategies.

Location-Specific Crime Prevention Programs. Schools and routes to and from school. Public housing. Commercial settings. Parks and recreation facilities. Parking lots. Use of traffic barriers for crime and drug prevention. Understanding the actions and responses of potential victims and offenders in these and other settings. (See Goal III: ''Routine Activities and Victimization'' for a description of victim-related research using the routine activities approach). Focus on environmental and design features. Focus on a comprehensive approach.

Crimes and Offender Behavior. Offender daily activity patterns. Offense selection and planning. Target and victim selection. Modus operandi during the commission of an offense including co-offending. Disposition of noncash proceeds from crime. Offender perception of criminal justice system effectiveness. Disruption of stolen property markets.

Crime By and Related to Illegal Aliens. Recruitment, transportation, and smuggling of illegal aliens into the United States. Provision of false documentation to illegals. Employers' role in committing crimes related to hiring illegals and fostering crime among illegal aliens.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. For specific information on the programs described under this goal, potential applicants may contact:

Rosemary Murphy, (202) 307–2959, for school-based prevention programs, crime prevention in public housing, crime prevention partnerships and prevention for high-risk youths.

Richard Titus, (202) 307–0695 for location specific prevention (except schools and public housing), crimes and offender behavior, and crime by and related to illegal aliens.

Goal V: Improve Law Enforcement and the Criminal Justice System

Purpose

The purpose of this solicitation is to encourage efforts in research and evaluation that will advance criminal justice knowledge in the areas of policing, prosecution, defense, adjudication, and corrections. The primary focus of research and

evaluation under this goal is improvement of the efficiency, effectiveness, and fairness of the system. Certain types of cases, however, take priority. These involve violent juvenile and adult offenders, drug and alcohol abusers, and family violence offenders. Also of interest are the consequences of decisions and practices in one part of the system on other criminal justice agencies and on related social service agencies. Through this solicitation, NIJ also seeks a greater understanding of the relationship among the offender, victim, and the criminal justice system. All issues surrounding the case are of interest, but projects that focus on an issue from the perspective of the various participants—prosecutor, defender, judge, legislator—are encouraged.

Background

Each part of the criminal justice system faces new challenges. Juvenile arrests for violent crimes increased by 47 percent between 1988 and 1992; juvenile arrests for homicide increased by 51 percent during the same period. FBI data indicate that juvenile use of guns has risen dramatically. Prosecutors nationwide note that youthful offenders are being brought to their offices in increasing numbers.

The Nation's prison and jail population reached 1 million in the past year, with more than 5 million persons under some form of correctional supervision. Data from jails and prisons show a high incidence of substance abuse disorders among inmates. Approximately 70 percent of jail detainees have a history of substance abuse; 56 percent were under the influence of drugs or alcohol at the time of arrest.

A significant proportion of inmates with drug abuse problems have a high prevalence of other disorders. About 75 percent of inmates with mental disorders, for example, are also substance abusers. Other inmates abuse both drugs and alcohol. Few programs exist for such inmates who have special needs. In most State prison systems, for example, inmates may receive services from either mental health or substance abuse programs but not from programs designed to treat those with both conditions.

The 1994 Crime Law encourages innovations to improve criminal justice effectiveness in many of these areas, including community policing; prison construction and construction of alternative facilities such as boot camps for nonviolent offenders; and drug courts that combine court-supervised abstinence with outpatient treatment and sanctions for those who fail to comply. NIJ expects to issue separate solicitations for research in these areas in 1996.

White-collar and organized crime pose a serious threat to the stable and orderly functioning of society. These complex and sophisticated crimes threaten our economic stability, corrupt legitimate institutions, and undermine the public respect for government and law.

Research is also needed on the consequences of the decisionmaking process within the criminal justice system. Much criminal justice research has been specific to a single criminal justice agency, such as the decisions of police in using deadly force, charging decisions and plea bargaining practices of prosecutors and use by judges of intermediate sanctions. However, such studies rarely focus on the relationship among police, defense attorneys, public prosecutors, and judges in plea or sentence bargaining.

Moreover, much research on criminal justice evaluates effectiveness in terms of standards internal to a particular agency rather than the consequences that decisions and practices in one part of the system have for other components in the system or on system processes. There are studies of jail and prison overcrowding and of early release as a result of judicially mandated standards for maintaining correctional facilities, but little is known about their consequences for the criminal careers of offenders who have been released early. Likewise, there is little research on the effect of sentence length or a given type of sentence for any given offense.

Relatively little is known about how different kinds of crime are detected and selected by social service and other agents and the processes by which they are referred to law enforcement. NIJ seeks research addressing these broader issues.

Research Areas of Interest

Listed below are examples of research topics that could advance criminal justice knowledge under Goal V of the NIJ Research Plan. Individuals are encouraged to suggest their own topics of interest. Research is encouraged in, but not limited to, the following areas:

Law Enforcement

Note: NIJ is accepting applications for policing research during the June and December, 1996 review cycles. The Institute expects to issue a special policing solicitation in FY 1996. Law enforcement research and evaluation proposals received for the June review will be considered together with proposals submitted to the special policing solicitation.

Prosecution, Defense, and Adjudication

Issues at the Pretrial Stage. Effective release and detention decisions, charging decisions, and diversion decisions. Effective responses to witness intimidation. Impact of variations in discovery policy.

New Approaches. Specialized courts, e.g. domestic violence, firearms offenses. Community courts. Restorative justice. Community-based prosecution and defense services.

Drug Courts. Note: NIJ is not receiving applications for research on drug courts under the June and December 1995 deadlines. Instead, researchers should await the special solicitation to be issued in 1995, as noted above.

Juvenile Justice. (In coordination with the Office of Juvenile Justice and Delinquency Prevention.) Juvenile case processing, emphasizing waiver to adult courts. Diversion to noncriminal justice programs. Postarrest preconviction programs for chronic, serious juvenile offenders.

Community and Institutional Corrections

Sanctions and Punishments. Operating community-based sanctions as a system. Prosecutors' role in intermediate sanctions. Innovative programs in domestic violence, child abuse, firearms.

Meeting Offender Needs. Offenders with mental health and drug addiction conditions. Creating parity in services for incarcerated women. Coordinating transitional care and community reintegration.

Preserving Safety. Planning and managing ''super'' maximum security prisons. Managing juvenile offenders in adult facilities. Correctional officer health and safety risks.

Managing Change. Understanding the impacts of prison expansion. Correctional management of changing inmate populations. Inmate and correctional officers' safety. Managing offenders in the community.

Systemwide Issues

Consequences of Decisions on System Responses. The impact that reforms or major resources changes in one part of the system may have on another. Perceived fairness of the criminal justice system, particularly in minority communities, and appropriate responses by criminal justice professionals.

Sentencing. Costs and benefits of various State sentencing reforms. Impact of sentencing policy changes on prosecution, defense, and the courts, e.g. ''truth in sentencing'' and ''three strikes'' legislation, abolition of parole,

mandatory minimums, enhanced sentencing schemes for juvenile offenders.

Illegal Aliens. U.S. policy toward arrested illegal aliens. Impact on local criminal justice system. Links with immigration. Management of foreign language populations in correctional settings.

White-Collar and Organized Crime. For White-Collar Crime, research on the prevention and control of health care fraud, insider insurance fraud, and environmental crime, including regulatory issues, detention, investigation, and prosecution. For Organized Crime, research on the criminal justice response to international organized crime networks and enterprise, and organized crime corruption of legitimate industries and markets.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. To obtain specific information on the programs described under this goal, potential applicants may contact:

Lois Mock, (202) 307–0693, and Winifred Reed, (202) 307–2952, for policing.

Jordan Leiter, (202) 616–9487, for prosecution and adjudication.

Voncile Gowdy, (202) 307–2951, for corrections and sanctions.

Jack Riley, (202) 616–9030, for illegal aliens and the criminal justice system.

Lois Mock, (202) 307–0693, for white-collar and organized crime.

Goal VI: Develop New Technology for Law Enforcement and the Criminal Justice System

Purpose

The purpose of this solicitation is to encourage technological development projects that will improve the operational efficiency of the criminal justice system. Through this solicitation NIJ expects to support research that will enhance the safety and effectiveness of law enforcement and correctional officers and other officers of the court.

Background

Science and technology programs cut across the entire range of criminal justice issues and goals at NIJ; programs already in progress or in the early stages of planning and development promise to provide significant benefits in the 21st century. The Institute's science and technology mission is accomplished through three major program areas: the collection and dissemination of technical information, the development of standards and operation of an equipment testing program, and a research and development grants program.

To strengthen the collection and dissemination of technology information, NIJ is developing the capabilities of the National Law Enforcement and Corrections Technology Center (NLECTC) (the former Technology Assessment Program Information Center) and establishing regional law enforcement technology centers. The purpose of these centers is to provide criminal justice professionals with information on available technology, guidelines and standards for these technologies, and technical assistance in implementing them. These centers will be linked through a Technology Information Network (TIN) to provide Federal, State and local agencies with objective, reliable, and timely information on technologies and equipment, such as who are the producers and users; where high-cost, seldom-used equipment can be borrowed for temporary or emergency situations; what the current equipment standards are; tests and evaluations; and what safety, health, or procedure bulletins have been issued. The TIN will also link the centers with the current Regional Information Sharing Service (RISS) that will then create an overall law enforcement technology exchange network. NIJ has also established an Office of Law Enforcement Technology Commercialization (OLETC) to help bring technology to the market place for criminal justice procurement.

One of the most significant developments of NIJ's criminal justice technology and standards program was the development of soft body armor for police officers and standards governing its manufacture and sale. NIJ has also developed standards for vehicle tracking devices, security systems for doors and windows, breath alcohol testing, autoloading pistols, mobile antennas, and other equipment. The Institute is currently completing the development of performance standards for two DNA testing procedures: Restriction Fragment Length Polymorphism (RFLP) and Polymerase Chain Reaction (PCR). The standards program is funded by NIJ through the Office of Law Enforcement Standards (OLES) at the National Institute of Standards and Technology (NIST).

NIJ's research and development efforts have also been significant and broad in scope in other areas. In the area of forensic science, NIJ has supported a wide range of research on fingerprints, blood and semen, DNA, trace evidence, bite marks, and forged or altered documents. Further research is needed, particularly in DNA testing, weapons identification, fingerprinting, and trace evidence. Progress is also being made to develop alternatives to lethal force. When confronted with the need to use force, officers are limited to the use of firearms, batons, physical ''hands-on'' restraint, or, more recently, chemical agents such as pepper spray. To provide alternatives, NIJ initiated a Less-Than-Lethal technology program to develop innovative, nonlethal measures suitable for use in situations involving fleeing suspects, domestic disturbances, barricades, issuing search warrants, drug raids, prison or jail disturbances, etc.

This announcement also supports research recommendations of the Department of Justice (DOJ) and the Department of Defense (DOD) under a Memorandum of Understanding (MOU) for interagency collaboration in developing and sharing dual-use technologies for law enforcement agencies and military operations other than war. Congress has appropriated fiscal year 1995 funds for this program through the Defense Authorization Bill. The day-to-day management of the program is carried out at the DOD Advanced Research Projects Agency (DARPA) under a Joint Program Steering Group (JPSG) with equal numbers of program managers from the Defense and Justice Departments.

In soliciting research and development topics, NIJ principally focuses on technologies and studies that will support the needs of State and local criminal justice agencies. The Institute's science and technology research also addresses the legal and social issues related to the employment of new technologies in order to ensure that they will be acceptable to the agency and the community.

Research Areas of Interest

Listed below are examples of research areas under Goal VI of the NIJ Research Plan where new or improved technologies could enhance the efficacy of the criminal justice system and reduce the level of injuries and death during policing and correctional operations. Individuals are encouraged to suggest their own topics of interest. Projects should be directed toward the production of affordable and practical equipment or systems that will have reasonably wide application to Federal, State, and local agencies. Research is encouraged in, but not limited to, the following areas:

Forensic Sciences. Identification and development of evidence in DNA/

serology, finger-prints, trace evidence, pathology, entomology, odontology, toxicology, questioned documents, and weapons identification.

Less-Than-Lethal Technology. Reduction in the incidence of injuries and death to officers and the public during confrontations, especially those requiring the use of force, arrest of suspects, transport of suspects or prisoners, pursuit of fleeing suspects on foot or in vehicles, and control of violent individuals or crowds in the streets or in prisons and jails. Enhancement of officer safety. Field evaluations of new less-than-lethal technology.

Science and Technology. Virtual reality technology for officer training; command and control operations; providing improved courtroom security; improving the efficiency of probation and parole operations; identifying concealed weapons; monitoring the status, health, and location of officers or prisoners; and detecting and disabling explosives. Technology useful in the detection and apprehension of persons engaged in computer crime.

Drug Testing. Developing or adapting analytic techniques for extracting drug-related material from hair and urine and other body fluids. Comparative efficiencies and relative costs as well as the utility of the testing techniques in various criminal justice settings.

Contact

Applicants are encouraged to contact NIJ Program Managers to discuss topic viability, data availability, or proposal content before submitting proposals. To obtain specific information on the programs described under this goal, potential applicants may contact:

Richard M. Rau, Ph.D., (202) 307–0648, for the Forensic Sciences Program and the Drug Testing Program.

Raymond L. Downs, Ph.D., (202) 307–0646, for the Less-Than-Lethal Program and the Science and Technology Program.

Kevin Jackson, (202) 307–2956, for the Standards Development and Testing Program and the Law Enforcement Technology Centers.

DOD/DOJ Memorandum of Understanding.

Peter Nacci, (703) 351–8608, for information on the law enforcement aspects of the DOJ/DOD MOU.

Dave Fields, Ph.D., (703) 696–2330, for information on the Military Operations Other Than War aspects of the DOJ/DOD MOU.

General Law Enforcement Technology Information

Marc Caplan, National Law Enforcement and Corrections Technology Center, (800) 248–2742, for information on specific law enforcement technologies that are under development or in production, technologies in use by law enforcement agencies, soft-body armor and other equipment standards, equipment testing and results, and other such nongrant-related questions.

Administrative Guidelines

In this section applicants will find recommendations to grant writers, requirements for grant recipients, general application information, and a reiteration of the 1995–1996 grant application deadlines.

Application Information

Please see ''Requirements for Award Recipients'' below for general application and eligibility requirements and selection criteria. Proposals not conforming to these application procedures will not be considered.

Award Period. NIJ limits its grants and cooperative agreements to a maximum period of 24 months.

Due Date. Ten (10) copies of fully executed proposals should be sent to: [Name and Number of Specific Goal], National Institute of Justice, 633 Indiana Avenue N.W., Washington, DC 20531.

Completed proposals must be received at the National Institute of Justice by the close of business on June 17 and December 16, 1996. Extensions of these deadlines will not be permitted.

Contact. Applicants are encouraged to contact NIJ Program Managers in the appropriate goal areas to discuss topic viability, data availability, or proposal content before submitting proposals.

Recommendations to Grant Writers

Over the past 4 years, Institute staff have reviewed approximately 1,500 grant applications. On the basis of those reviews and inquiries from applicants, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals. Many of these recommendations were adopted from materials provided to NIJ by the State Justice Institute, especially for applicants new to NIJ. Others reflect standard NIJ requirements.

The author(s) of the proposal should be clearly identified. Proposals that are incorrectly collated, incomplete, or handwritten will be judged as submitted or, at NIJ's discretion, will be returned without a deadline extension. No additions to the original submission are allowed. The Institute suggests that applicants make certain that they address the questions, issues, and requirements set forth below when preparing an application.

1. What is the subject or problem you wish to address? Describe the subject or problem and how it affects the criminal justice system and the public. Discuss how your approach will improve the situation or advance the state of the art of knowledge or state of the science and explain why it is the most appropriate approach to take. Give appropriate citations to the scientific literature. The source of statistics or research findings cited to support a statement or position should be included in a reference list.

2. What do you want to do? Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project, rather than the tasks or activities to be conducted. To the greatest extent possible, applicants should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance an application.

3. How will you do it? Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from agencies that will be involved in or directly affected by the proposed project.

4. What should you include in a grant application for a program evaluation? An evaluation should determine whether the proposed program, training, procedure, service, or technology accomplished the objectives it was designed to meet. Applicants seeking support for a proposed evaluation should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements that will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period,

who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. How will others learn about your findings? Include a plan to disseminate the results of the research, evaluation, technology, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods that will be used to inform the field about the project such as the publication of journal articles or the distribution of key materials. Expectations regarding products are discussed more fully in the following section, ''Requirements for Award Recipients.'' A statement that a report or research findings ''will be made available to'' the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items. Applicants must concisely describe the interim and final products and address each product's purpose, audience, and usefulness to the field. This discussion should identify the principal criminal justice constituency or type of agency for which each product is intended and describe how the constituent group or agency would be expected to use the product or report. Successful proposals will clearly identify the nature of the grant products that can reasonably be expected if the project is funded. In addition, a schedule of delivery dates of all products should be delineated.

6. What are the specific costs involved? The budget application should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of ''Other'' or ''Miscellaneous'' items should be specified in the application budget narrative and should not include set-asides for undefined contingencies.

7. How much detail should be included in the budget narrative? The budget narrative should list all planned expenditures and detail the salaries, materials, and cost assumptions used to estimate project costs. The narrative and cost estimates should be presented under the following standard budget categories: personnel, fringe benefits, travel, equipment, supplies, contracts, other, and indirect costs. For multiyear projects, applicants must include the full amount of NIJ funding for the entire life of the project. This amount should be reflected in item 15g on Form 424 and line 6k on 424A. When appropriate, grant applications should include justification of consultants and a full explanation of daily rates for any consultants proposed. To avoid common shortcomings of application budget narratives, include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50 percent of 1 year's annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × $0.05/page = $375.00). Supply and expense estimates offered simply as ''based on experience'' are not sufficient.

8. What travel regulations apply to the budget estimates? Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Federal Government. The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

9. Which forms should be used? A copy of Standard Form (SF) 424, Application for Federal Assistance, plus instructions, appears in the back of this book. Please follow the instructions carefully and include all parts and pages. In addition to SF 424, recent requirements involve certification regarding (1) lobbying; (2) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. The certification form that is attached to SF 424 should be signed by the appropriate official and included in the grant application.

10. What technical materials are required to be included in the application?

A one-page abstract of the full proposal, highlighting the project's purpose, methods, activities, and when known, the location(s) of field research.

A program narrative, which is the technical portion of the proposal. It should include a clear, concise statement of the problem, goals, and objectives of the project and related questions to be explored. A discussion of the relationship of the proposed work to the existing literature is expected.

A statement of the project's anticipated contribution to criminal justice policy and practice. It is important that applicants briefly cite those particular issues and concerns of present-day criminal justice policy that stimulate the proposed line of inquiry and suggest what their own investigation would contribute to current knowledge.

A detailed statement of the proposed research or study design and analytical methodologies. The proposed data sources, data collection strategies, variables and issues to be examined, and procedures of analysis to be employed should be delineated carefully and completely. When appropriate, experimental designs are encouraged because of their potential relevance to policymaking and the strength of the evidence they can produce.

The organization and management plan to conduct the study. A list of major milestones of events, activities, and products and a timetable for completion that indicates the time commitments to individual project tasks should be included. All grant activities, including writing of the final report, should be completed within the duration of the award period.

The applicant's curriculum vitae should summarize education, research experience, and bibliographic information related to the proposed work.

11. Use of grant funds. Grant funds may be used to purchase or lease equipment essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Funds may not be used for operating programs, writing texts or handbooks, training, etc.

12. To what extent may indirect costs be included in the budget estimates? It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect

cost rate that has been approved by a Federal agency within the past 2 years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, the applicant should contact the Office of the Comptroller, Office of Justice Programs, (202) 307–0604, to obtain information about preparing an indirect cost rate proposal.

13. What, if any, matching funds are required? Units of State and local governments (not including publicly supported institutions of higher education) are encouraged to contribute a match (cash, noncash, or both) of requested funds. Other applicants also are encouraged to seek matching contributions from other Federal agencies or private foundations to assist in meeting the costs of the project.

14. Should other funding sources be listed? Applicants are expected to identify all other Federal, local, or private sources of support, including other NIJ programs, to which this or a closely related proposal has been or will be submitted. This information permits NIJ to consider the joint funding potential and limits the possibility of inadvertent duplicate funding. Applicants may submit more than one proposal to NIJ, but the same proposal cannot be submitted in more than one program area.

15. What are the deadlines? June 15 and December 15, 1995, and June 17 and December 16, 1996.

16. Is there a page limit? The Institute has established a limit of 30 double-spaced 12-point font pages for all normal grant applications. This page limit does not include references, budget narrative, curriculum vitae, or necessary appendices. Applications for small grants ($1,000–$50,000) are limited to 15 double-spaced pages. Applicants are cautioned that obvious attempts to stretch interpretations of these limits will disqualify proposals from review.

17. What is the page order? The following order is mandatory. Omission can result in rejection of the application:

1. SF 424.
2. Budget narrative.
3. Assurances and Certifications, etc.
4. Negotiated rate agreement.
5. Names and affiliations of all key persons from applicant and subcontractor(s), advisors, consultants, and Advisory Board members. Include the name of the Principal Investigator, title, organizational affiliation (if any), department (if institution of higher education), address, phone, and fax.
6. Abstract.
7. Table of Contents.
8. Program narrative.
9. References.
10. Resumés of key personnel.

18. What does the review process entail? After all applications for a competition are received, NIJ will convene a series of peer review panels of criminal justice professionals and researchers. NIJ will assign proposals to peer panels that it deems most appropriate. Panel members read each proposal and meet to assess the technical merits and policy relevance of the proposed research. Panel assessments of the proposals, together with assessments by NIJ staff, are submitted to the Director, who has sole and final authority over approval and awards. The review normally takes 60 to 90 days, depending on the number of applications received. Each applicant receives written comments from the peer review panel concerning the strengths and weaknesses of the proposal. These comments may include suggestions for how a revised or subsequent application to NIJ might be improved.

19. What are the criteria for an award? The essential question asked of each applicant is, ''If this study were successful, how would criminal justice policies or operations be improved?'' Four criteria are applied in the evaluation process:

Impact of the proposed project.

Feasibility of the approach to the issue, including technical merit and practical considerations.

Originality of the approach, including creativity of the proposal and capability of the research staff.

Economy of the approach. Applicants bear the responsibility of demonstrating to the panel that the proposed study addresses the critical issues of the topic area and that the study findings could ultimately contribute to a practical application in law enforcement or criminal justice. Reviewers will assess applicants' awareness of related research or studies and their ability to direct the research or study toward answering questions of policy or improving the state of criminal justice operations.

Technical merit is judged by the likelihood that the study design will produce convincing findings. Reviewers take into account the logic and timing of the research or study plan, the validity and reliability of measures proposed, the appropriateness of statistical methods to be used, and each applicant's awareness of factors that might dilute the credibility of the findings. Impact is judged by the scope of the proposed approach and by the utility of the proposed products. Reviewers consider each applicant's understanding of the process of innovation in the targeted criminal justice agency or setting and knowledge of prior uses of criminal justice research by the proposed criminal justice constituency. Appropriateness of products in terms of proposed content and format is also considered.

Applicants' qualifications are evaluated both in terms of the depth of experience and the relevance of that experience to the proposed research or study. Costs are evaluated in terms of the reasonableness of each item and the utility of the project to the Institute's program.

20. Are there any other considerations in selecting applications for an award? Projects should have a national impact or have potential relevance to a number of jurisdictions. Because of the broad national mandate of the National Institute of Justice, projects that address the unique concerns of a single jurisdiction should be fully justified. Projects that intend to provide services in addition to performing research are eligible for support, but only for the resources necessary to conduct the research tasks outlined in the proposal. The applicant's performance on previous or current NIJ grants will also be taken into consideration in making funding decisions.

21. Who is eligible to apply? NIJ awards grants to, or enters into cooperative agreements with, educational institutions, nonprofit organizations, public agencies, individuals, and profitmaking organizations that are willing to waive their fees. Where appropriate, special eligibility criteria are indicated in the separate solicitations.

22. Does NIJ accept resubmission of proposals? The Institute will accept resubmission of a previously submitted proposal. The applicant should indicate for Question 8, Form 424, that the application is a revision. The applicant should include this information in the abstract. Finally, the applicant should prepare a one-page response to the earlier panel review (to follow the abstract) including (1) the title, submission date, and NIJ-assigned application number of the previous proposal and (2) a brief summary of responses to the review and/or revisions to the proposal.

NIJ Policy Regarding Unsolicited Proposals

It is NIJ's policy to submit all unsolicited proposals to peer review. NIJ's peer review process takes place in

periodic cycles; unsolicited proposals received will be included in the next available review cycle. NIJ will offer the applicant the option of revising the proposal in accordance with the program goals established in the Plan or, alternatively, submitting the original proposal to the peer panel it deems most appropriate.

Requirements for Award Recipients

Required Products

Each project is expected to generate tangible products of maximum benefit to criminal justice professionals, researchers, and policymakers. In particular, NIJ strongly encourages documents that provide information of practical utility to law enforcement officials; prosecutors; judges; corrections officers; victims services providers; and Federal, State, county, and local elected officials. Products should include:

A summary of approximately 2,500 words highlighting the findings of the research and the policy issues those findings will inform. The material should be written in a style that will be accessible to policy officials and practitioners and suitable for possible publication as an NIJ Research in Brief. An NIJ editorial style guide is sent to each project director at the time of the award.

A full technical report, including a discussion of the research question, review of the literature, description of project methodology, detailed review of project findings, and conclusions and policy recommendations.

Clean copies of all automated data sets developed during the research and full documentation prepared in accordance with the instructions in the NIJ Data Resources Manual.

Brief project summaries for NIJ use in preparing annual reports to the President and the Congress. As appropriate, additional products such as case studies and interim and final reports (e.g., articles, manuals, or training materials) may be specified in the proposal or negotiated at the time of the award.

Public Release of Automated Data Sets

NIJ is committed to ensuring the public availability of research data and to this end established its Data Resources Program in 1984. All NIJ award recipients who collect data are required to submit a machine-readable copy of the data and appropriate documentation to NIJ prior to the conclusion of the project. The data and materials are reviewed for completeness. NIJ staff then create machine-readable data sets, prepare users' guides, and distribute data and documentation to other researchers in the field. A variety of formats are acceptable; however, the data and materials must conform with requirements detailed in Depositing Data With the Data Resources Program of the National Institute of Justice: A Handbook. A copy of this handbook is sent to each project director at the time of the award. For further information about NIJ's Data Resources Program, contact Dr. Pamela Lattimore, (202) 307–2961.

Standards of Performance by Recipients

NIJ expects individuals and institutions receiving its support to work diligently and professionally toward completing a high-quality research or study product. Besides this general expectation, the Institute imposes specific requirements to ensure that proper financial and administrative controls are applied to the project. Financial and general reporting requirements are detailed in Financial and Administrative Guide for Grants, a publication of the Office of Justice Programs. This guideline manual is sent to recipient institutions with the award documents. Project directors and recipient financial administrators should pay particular attention to the regulations in this document.

Program Monitoring

Award recipients and Principal Investigators assume certain responsibilities as part of their participation in government-sponsored research and evaluation. NIJ's monitoring activities are intended to help grantees meet these responsibilities. They are based on good communication and open dialogue, with collegiality and mutual respect. Some of the elements of this dialogue are:

Communication with NIJ in the early stages of the grant, as the elements of the proposal's design and methodology are developed and operationalized.

Timely communication with NIJ regarding any developments that might affect the project's compliance with the schedules, milestones, and products set forth in the proposal. (See statement on Timeliness, below).

Communication with other NIJ grantees conducting related research projects. An annual ''cluster conference'' should be anticipated and should be budgeted for by applicants at a cost of $1,000 for each year of the grant.

Providing NIJ on request with brief descriptions of the project in interim stages at such time as the Institute may need this information to meet its reporting requirements to the Congress. NIJ will give as much advance notification of these requests as possible, but will expect a timely response from grantees when requests are made. NIJ is prepared to receive such communication through electronic media.

Providing NIJ with copies of presentations made at conferences, meetings, and elsewhere based in whole or in part on the work of the project. Providing NIJ with prepublication copies of articles based on the project appearing in professional journals or the media, either during the life of the grant or after.

Other reporting requirements (Progress Reports, Final Reports, and other grant products) are spelled out elsewhere in this section of the Research Plan. Financial reporting requirements will be described in the grant award documents received by successful applicants.

Communications

NIJ Program Managers should be kept informed of research progress. Written progress reports are required on a quarterly basis. All awards use standard quarterly reporting periods (January 1 through March 31, April 1 through June 30, and so forth) regardless of the project's start date. Progress reports will inform the monitor which tasks have been completed and whether significant delays or departures from the original workplan are expected.

Timeliness

Grantees are expected to complete award products within the timeframes that have been agreed upon by NIJ and the grantee. The Institute recognizes that there are legitimate reasons for project extensions. However, NIJ does not consider the assumption of additional research projects that impinge upon previous time commitments as legitimate reasons for delay. Projects with unreasonable delays can be terminated administratively. In this situation, any funds remaining are withdrawn. Future applications from either the project director or the recipient institution are subject to strict scrutiny and may be denied support based on past failure to meet minimum standards.

Publications

The Institute encourages grantees to prepare their work for NIJ publication. In cases where grantees disseminate their findings through a variety of media, such as professional journals, books, and conferences, copies of such

publications should be sent to the Program Manager as they become available, even if they appear well after a project's expiration. NIJ imposes no restriction on such publications other than the following acknowledgment and disclaimer: This research was supported by grant number _____ from the National Institute of Justice. Points of view are those of the author(s) and do not necessarily represent the position of the U.S. Department of Justice.

Data Confidentiality and Human Subjects Protection

Research that examines individual traits and experiences plays a vital part in expanding our knowledge about criminal behavior. It is essential, however, that researchers protect subjects from needless risk of harm or embarrassment and proceed with their willing and informed cooperation. NIJ requires that investigators protect information identifiable to research participants. When information is safeguarded, it is protected by statute from being used in legal proceedings: ''[S]uch information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings'' (42 United States Code 3789g).

Applicants should file their plans to protect sensitive information as part of their proposal. Necessary safeguards are detailed in 28 Code of Federal Regulations (CFR), Part 22. A short ''how-to'' guideline for developing a privacy and confidentiality plan can be obtained from NIJ program managers.

In addition, the U.S. Department of Justice has adopted Human Subjects policies similar to those established by the U.S. Department of Health and Human Services. In general, these policies exempt most NIJ-supported research from Institutional Review Board (IRB) review. However, the Institute may find in certain instances that subjects or subject matters may require IRB review. These exceptions will be decided on an individual basis during application review. Researchers are encouraged to review 28 CFR Part 46.101 to determine their individual project requirements.

Office of Juvenile Justice and Delinquency Prevention

Comprehensive Program Plan for Fiscal Year 1996 OJJDP Program Objectives

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) seeks to focus its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State, Native American, Native Alaskan, and local governments and public and private organizations. To that end, OJJDP has set three goals that constitute the major elements of a sound policy for juvenile justice and delinquency prevention:

- To promote delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers.
- To improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- To preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.

Underlying each of the three goals is the overarching premise that achievement of these goals is vital to protecting the long-term safety of the public from increased juvenile delinquency and violence. In pursuing these goals, we divide our programs into the key categories you will find in the program plan: public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse, neglect, and dependency proceedings. The following discussion, however, addresses the broader goals of OJJDP.

Delinquency Prevention and Early Intervention

A primary goal of OJJDP is to identify and promote programs that prevent or reduce the occurrence of juvenile offenses, both criminal and non-criminal, and to intervene immediately and effectively when delinquent or status offense conduct first occurs. A sound policy for juvenile delinquency prevention seeks to strengthen the most powerful contributing factor to socially acceptable behavior—a productive place for young people in a law-abiding society.

Delinquency prevention programs can operate on a broad scale, providing for positive youth development, or can target juveniles identified as being at high risk for delinquency, with programs designed to reduce future juvenile offending. OJJDP prevention programs take a risk-focused delinquency prevention approach based on public health and social development models.

Early interventions are designed to provide services to juveniles whose non-criminal misbehavior indicates that they are on a delinquent pathway, or for first time non-violent delinquent offenders or non-serious repeat offenders who do not respond to initial system intervention. These interventions are generally non-punitive but serve to hold a juvenile accountable while providing services tailored to the individual needs of the juvenile and the juvenile's family. They are designed to both deter future misconduct and ameliorate risk or enhance protective factors.

Improvement of the Juvenile Justice System

A second goal of OJJDP is to promote improvements in the juvenile justice system and facilitate the most effective allocation of system resources. This goal is necessary for holding juveniles who commit crimes accountable for their conduct, particularly serious and violent offenders who sometimes slip through the cracks of the system or are inappropriately diverted. This includes assisting law enforcement officers in their efforts to prevent and control delinquency and the victimization of children through community policing programs and coordination and collaboration with other system components and with child caring systems. It involves helping juvenile and family courts, and the prosecutors and public defenders who practice in those courts, to provide a system of justice that maintains due process protections. It requires trying innovative programs and carefully evaluating those programs to determine what works and what does not work. It includes a commitment to involving crime victims in the juvenile justice system and ensuring that their rights are considered.

In this regard, OJJDP will continue to work closely with the Office for Victims of Crime to further cooperative programming, including the provision of services to juveniles who are crime victims or when the provision of victims services improves the operation of the juvenile justice system. Improving the juvenile justice system also calls for building an appropriate juvenile detention and corrections capacity and for intensified efforts to use juvenile detention and correctional facilities when necessary and under conditions that maximize public safety, while providing effective rehabilitation

services. It requires encouraging states to carefully consider the use of expanded transfer authority that sends the most serious, violent, and intractable juvenile offenders to the criminal justice system, while preserving individualized justice. It necessitates conducting research and gathering statistical information in order to understand how the juvenile justice system works in serving children and families. And finally, the system can only be improved if information and knowledge is communicated, understood, and applied for the purpose of juvenile justice system improvement.

Corrections, Detention and Community-Based Alternatives

A third OJJDP goal is to maintain the public safety through a balanced use of secure detention and corrections, and community-based alternatives. This involves identifying and promoting effective community-based programs and services for juveniles who have formal contact with the juvenile justice system, and emphasizing options that maintain the safety of the public, are appropriately restrictive, and promote and preserve positive ties with the child's family, school, and community. Communities cannot afford to place responsibility for juvenile delinquency entirely on publicly operated juvenile justice system programs. A sound policy for combating juvenile delinquency and reducing the threat of youth violence makes maximum use of a full range of public and private programs and services, most of which operate in the juvenile's home community, including those provided by the health and mental health, child welfare, social service, and educational systems.

Coordination of the development of community-based programs and services with the development and use of a secure detention and correctional system capability for those juveniles who require a secure option is cost effective, will protect the public, reduce facility crowding, and result in better services for both institutionalized juveniles and those who can be served while remaining in their community environment.

Summary of Public Comments on the Proposed Comprehensive Plan for Fiscal Year 1996

OJJDP published its Proposed Comprehensive Plan for Fiscal Year (FY) 1996 in the Federal Register (Vol. 61, No. 34) on February 20, 1996, for a 45-day public comment period. OJJDP received 46 letters commenting on the proposed plan. All comments have been considered in the development of the Final Comprehensive Plan for FY 1996.

The majority of the letters provided positive comments about the overall plan and its programs. The following is a summary of the substantive comments received and OJJDP's responses to the comments. Unless otherwise indicated, each comment was made by a single respondent.

Comment: Seven respondents expressed strong support for the overall plan. One writer asserted that data projections for juvenile crime for the next 15 years make a compelling case for full funding of all OJJDP programs. Another commended OJJDP for the broad-based and forward-thinking programming in the plan. A third comment indicated that the proposed programs will strengthen law enforcement prevention efforts and have an impact on juvenile crime. One respondent highly endorsed the existing OJJDP program and the proposed plan but also recommended that funds be earmarked for imaginative, innovative, and creative programs with imagineering concepts to maximize program benefits. One comment described the plan as a comprehensive, balanced approach to juvenile delinquency and delinquency prevention. Another supported OJJDP's purpose to provide a comprehensive, coordinated approach to prevent and control juvenile crime and improve the juvenile justice system. The final comment called OJJDP's priorities essential for addressing the increasing complexity of issues facing the juvenile justice system.

Response: OJJDP appreciates the support expressed by these and other respondents.

Comment: Five letters contained criticism of the overall plan. Three of these cited the lack of specific funding information as a major flaw. One of those letters also noted that the majority of funding is already committed, mostly to long-time recipients, and that the plan contains a large number of social service programs with no proven effectiveness in reducing or preventing delinquency. This writer recommended eliminating or reducing 10 programs and suggested that OJJDP reissue the plan to solicit a program to develop a comprehensive drug prevention curriculum for students. Another respondent also expressed concern about the large number of initiatives and activities with predetermined recipients. Citing the JJDP Act competition requirement (Section 262(d)(1)(B)), the writer asked about criteria for waiving the competitive process. One respondent found that the plan was not sufficiently comprehensive and called for programs to teach correct principles and moral responsibility, particularly in the family unit and in the schools.

Response: Proposed funding levels were not included in the plan due to the uncertainty of FY 1996 appropriations. The proposed plan was premised on FY 1996 funding being at or near FY 1995 levels. Continuation commitments, coupled with a variety of proven or ongoing projects, many of which are technical assistance and training initiatives that have a national impact and level funding, preclude wholesale funding of new programs in FY 1996. All new programs will be competitively funded with no waivers of the competition requirement contemplated.

Comment: One comment on the discretionary grant continuation policy suggested that OJJDP should emphasize funding innovative programs along with the continuation of programs. The writer noted that each year it appears that limited funds are available for new programs.

Response: The plan includes several new and innovative programs coupled with a focus on program evaluation. Innovative research and evaluation programs will be eligible to compete under an expanded field-initiated research program in FY 1996.

Comment: A Native American respondent stated that the plan should specifically name Indian Nations as partners.

Response: The cited language in the plan is amended to read: ''establishing partnerships with State, Native American, Native Alaskan, and local governments and public and private organizations.''

Comment: OJJDP received three comments on the goals listed in the plan. One respondent suggested that the first goal could be strengthened by calling specifically for better character development in the home and in schools. The writer stated that the second goal does not convey the idea that the primary effort should be character corrections, in the corrections system, to shrink the number of offenders. The second respondent expressed support for the three goals and described how the Judicial Branch of the Navajo Nation is working toward those same goals, with early intervention being of particular importance. The third letter expressed support for the goals and indicated that their achievement is vital to public safety.

Response: Both prevention and treatment programs seek to improve character and instill positive values in

juveniles. OJJDP has long supported family strengthening programs, many of which feature character development objectives.

Comment: Six respondents commented on the field-initiated research program. All were generally supportive, and five made substantive comments. One suggested specific topics: measuring effectiveness of intervention with young prostitutes; drug treatment approaches, educational/literacy project effectiveness; and what works with the multiproblem young criminal. One respondent, noting the call for improving data collaboration efforts, suggested that a portion of the research be applied to projects that would seek to standardize court reports, thus increasing the juvenile justice system's ability to access and share appropriate information with child protective services and mental health agencies. Another writer who supported the research initiative expressed interest in two priority research topics: (1) youth gangs in residential facilities and (2) mental health issues, with emphasis on eliminating posttraumatic stress disorder in youthful offenders and breaking the cycle of violence. One respondent was pleased with the program but expressed concern that the priority areas did not specifically include adolescent sexual offenders. A Native American respondent pointed out several research needs in the Native American community, including technical assistance and program support to acquire a workable data base, share information, and analyze that information for policy development and planning. This respondent suggested that OJJDP should directly fund or devote staff or contract expertise to relevant studies and should encourage its staff and consultants to network with Indian Nation programs to undertake the studies that policy development requires.

Response: While the plan suggests priority research topics, OJJDP will take into careful consideration each of the topics suggested by these respondents. The adolescent sex offender is a topic of particular interest to OJJDP. Several OJJDP studies related to the juvenile sexual offender are nearing completion, and it is anticipated that study findings will suggest future research directions. While Native American research needs have not been specifically mentioned, OJJDP welcomes applications from the Native American community that identify these needs and propose studies that will meet them. OJJDP is also working closely with the Native American desk within the Office of Justice Programs to obtain feedback on its Native American programs, including the new 1996 Native American training and technical assistance program.

Comment: In a comment related to the national juvenile court data archives, a respondent suggested that funds be set aside for States to develop statewide juvenile information systems and to explore issues such as minority overrepresentation, use of legal counsel, and gender implications.

Response: OJJDP obtains invaluable information from State information systems. Such systems are used to analyze both juvenile court and juvenile corrections activity. The Office understands that the development and maintenance of such systems are expensive and time consuming. Many States do not have the resources available to fully implement information systems that can contribute to a national information system. In the past, the Office has supported the development and improvement of State systems through programs such as the National Juvenile Court Data Archive and the Juveniles Taken Into Custody program. Each includes a technical assistance component that aids States in determining appropriate information systems and information collection methods.

The Office recognizes the need for further development of State information systems. Areas other than corrections and courts also require attention. OJJDP will examine more carefully the role of the Office through the development of a long-term information systems development plan. This plan will examine national information needs and make specific recommendations for meeting these needs. As part of this plan, OJJDP will examine what assistance can be provided to the States as they develop and refine their information systems and how these systems can also help to meet overarching national information needs.

Comment: One respondent objected to funding the National Conference of State Legislatures, suggesting that OJJDP promote State Agencies as the appropriate entities to provide technical assistance to State legislatures.

Response: In funding the National Conference of State Legislatures (NCSL) in FY 1995, OJJDP concluded that the organization was uniquely qualified to provide pertinent and timely information to State legislators and their staff. NCSL looks to traditional Federal, State, and local juvenile justice agencies for information, packaging the data to meet the specific needs of State lawmakers. In addition, as a membership organization, NCSL has a number of information tools, such as professional publications and conferences, designed to reach State legislators.

Comment: One comment addressed telecommunications assistance, noting the very positive response in the writer's State to OJJDP's teleconference series. The respondent made two suggestions: (1) Provide special allocations to States to facilitate downlinking of teleconferences and (2) focus more on the use of new technology such as the interactive video disc (IVD).

Response: OJJDP appreciates hearing of the value of its satellite teleconference series. In the coming year, OJJDP and its telecommunications grantee, Eastern Kentucky University (EKU), will explore the use of other technologies, including IVD, for information dissemination and training purposes. To date, OJJDP has not been apprised of problems viewers may have had in affording or accessing downlink sites. In fact, EKU has acted as coordinator to help interested individuals and organizations locate sites in the community and to join groups of persons living in their same geographical area to sponsor and attend teleconferences.

Comment: A respondent called for more emphasis on private sector involvement and media support in the area of public safety and law enforcement.

Response: Combating Violence and Delinquency: The National Juvenile Justice Action Plan, recently released by the Coordinating Council on Juvenile Justice and Delinquency Prevention, has as one of its eight primary objectives to reduce youth violence: ''Implement an aggressive public outreach campaign on effective strategies to combat youth violence.'' The Coordinating Council is chaired by the Attorney General, co-chaired by the Administrator of OJJDP, and includes nine Federal agency and nine practitioner members. The Council developed the Action Plan as a rallying point to mobilize individuals and organizations across the country toward eight objectives that, together, provide a comprehensive—tough but smart—response to the crisis of youth violence and victimization. The role of the private sector and the media in implementing the Action Plan will be critical in its success.

Comment: OJJDP received four comments strongly supporting the Kids and Guns initiative. One recommended that OJJDP should clarify the proposed plan to allow State agencies to apply if they can demonstrate that the proposed

program would be community-based. One respondent urged substantial funding for competitive, comprehensive, communitywide demonstration projects that focus on the reduction and prevention of gun violence. Another comment praised the support for linkages between community and law enforcement responses to youth gun violence. A fourth respondent suggested that gun violence prevention programs must take into account public safety and perception and cause students to take responsibility for their actions and the actions of their peers while at the same time working with the community to ensure the healthy development of each child. The writer also stressed that youth gun violence reduction programs must be tailored to the needs of each community.

Response: The final Kids and Guns initiative program description incorporates each of these comments. The solicitation will allow State agencies to apply if they can demonstrate strong existing linkages to a community-based organization and if the proposed programs will be community-based.

Comment: Two respondents urged that recipients of OJJDP funds should be required to have ''zero tolerance'' for street gangs, charging that present policies appear to facilitate or foster the gang problem in some cases where funding has put active gang members on the Federal payroll.

Response: OJJDP's policy supports the elimination of crime and violence by criminal street gangs and would, therefore, not provide funding to any recipient that does not attempt to intervene with such gangs and their activities in such a way as to achieve this policy objective. OJJDP believes that the elimination of crime and violence can best be achieved through the mobilization of communities to prevent the formation of gangs and through collaboration between all elements of the system to eliminate gang crime and violence through intervention and suppression. OJJDP's program model does not legitimize criminal street gang membership or condone gang membership by youth.

Comment: OJJDP received four letters in support of community assessment centers. One respondent praised the centers as a valuable tool to service the front end of the juvenile justice system and raised four specific issues for consideration in competitive solicitations: replication (funding for new assessment centers), expansion (funding for existing centers to expand into areas not presently covered), technical assistance for communities that want to develop a community assessment center, and research/evaluation (funding for a research effort to study the effectiveness of assessment centers and answer policy questions raised in OJJDP's concept paper on assessment centers). Another writer called the development of one-stop, community-based intake, assessment, and case referral centers a step in the right direction. A third respondent described a proposed center that would eventually result in the creation of alternatives to detention and enhanced ability to put together a graduated sanctions approach. The fourth respondent called community assessment centers an additional option for the juvenile court system in sentencing adolescents and stated that the centers could provide short-term diagnostic residential placement and allow school systems to avoid the expense of long-term out-of-district placement.

Response: OJJDP agrees that community assessment centers are a promising approach to improving the multisystem responses to all types of youth at risk and delinquent youth. Community assessment centers can help communities in providing better assessments of a child's needs, designing a potentially more effective treatment plan, and creating a centralized location for information related to the child and the intended intervention, fostering a more effective and efficient case management service system.

As indicated in the proposed plan, an initial fact-finding phase is currently underway, including assessment center site visits in order to identify variations in the assessment center approach and to better understand the needs of the juvenile justice system in this area. Although a specific determination with regard to the elements of a program model has not yet been made, OJJDP plans to issue an assessment center solicitation within a short period of time. It is too early to say whether postadjudication diagnostic placements or school alternatives to out-of-district placements would be viable elements of an assessment center model.

Comment: Two writers commented in the area of training and technical assistance programs. One respondent suggested that OJJDP include funds and technical assistance to nontechnical staff who support very difficult youth and families and that these funds be available directly to grantees through the grant application process so they may seek help from within their local communities. Another writer referred to a growing need for training in cultural differences for law enforcement and juvenile justice practitioners.

Response: OJJDP agrees that training and technical assistance provided from a national level cannot fully meet the full spectrum of local needs. Funds are also provided to support training and technical assistance through the Formula Grants Program administered by States. Comprehensive State plans are required to support the development of an adequate research, training, and evaluation capacity. Further, 2 percent of Part B funds are set aside for technical assistance, most of which is delivered at the local level.

OJJDP agrees that there are training needs in cultural diversity. The Office has supported the development and nationwide implementation of a training of trainers curriculum in this area.

Comment: OJJDP received 10 comments concerning gender-specific programming for female juvenile offenders. Nine comments supported second-year funding for a Cook County, Illinois, program for female juvenile offenders. The 10th respondent requested information about possible funding for a program to promote self-esteem and offer alternatives to gangs to teenage girls in lower income areas.

Response: OJJDP provided a grant in FY 1995 to the Cook County Temporary Juvenile Detention Center for a 1-year developmental project under a competitive grant program. There was no commitment for subsequent year funding. OJJDP has also funded the PACE Center for Girls, which operates in seven sites throughout the State of Florida. PACE offers a continuum of services that are specially designed to meet the needs of at-risk teenage girls. In addition, OJJDP has targeted significant resources over the next 5 years to programs for at-risk girls and female juvenile offenders through funding of six sites under the SafeFutures Program.

There is no program funded to specifically promote self-esteem in girls from lower income areas. As noted above, OJJDP is funding the PACE Center for girls, which provides teenage girls, including those from lower income areas with both academic education courses and self-esteem programs.

In FY 1996, OJJDP will competitively fund a training and technical assistance program to help communities provide improved gender-specific services for at-risk and delinquent girls. OJJDP believes that this approach will take the lessons learned from prior funding and existing research and produce a national impact

that continuation funding of a single project could not achieve.

Comment: OJJDP received four comments on the proposed Native American technical assistance program. One writer recommended that OJJDP focus the expertise requirements of the solicitation on Indian juvenile justice and make the selection process for the technical assistance provider competitive. Another respondent stated that OJJDP should fund National Indian Justice Center training programs, pointing out that Indian students need tuition, travel, and lodging funds for these programs. The third respondent identified the need for trained workers for family building and for reestablishment of youth groups. The fourth writer expressed interest in technical assistance to replicate successful efforts by Native American tribes.

Response: OJJDP's solicitation for a technical assistance provider for Native American programs is focused on juvenile justice system theory, practice, and law in the context of Native American culture, traditions, and tribal law. The Native American technical assistance program will be awarded through a competitive selection process. OJJDP is aware of the work of the National Indian Justice Center, the technical assistance provider for OJJDP's Native American Community-Based Alternatives Program. OJJDP encourages the National Indian Justice Center and other Native American service providers to apply for funding under the Native American technical assistance program. The solicitation to be issued by OJJDP for the technical assistance provider for the Native American community will include the transfer of knowledge and technologies that have proven successful in Native American communities.

Comment: One commenter expressed the hope that the James E. Gould Memorial Program was not a duplication of the American Correctional Association's Accreditation of Correctional Officers, Caseworkers and Detention Staff Program.

Response: The James E. Gould Memorial Program is a competitive assistance award to provide technical assistance to juvenile correctional and detention facilities. Under the grant, the American Correctional Association (ACA) provides technical assistance and training on myriad issues for juvenile correctional and detention facilities. The accreditation program of the ACA is an entirely different, independent effort that is not funded by OJJDP.

Comment: One respondent questioned whether a greater emphasis on transfer of juveniles to criminal court represents an improvement to the juvenile justice system, suggesting that transfer deemphasizes the juvenile justice system and amounts to an abandonment of individualized justice. The writer indicated that rates of serious and violent juvenile crime have increased with the greater use of transfers in some areas. OJJDP was urged to place more emphasis on innovative approaches to serious and violent juvenile offenders, such as the New Mexico plan, the blended jurisdiction approach of Minnesota, and the serious juvenile offender statute as developed and implemented in Virginia.

Response: OJJDP is committed to both protecting the public and separating certain serious, violent, and chronic juvenile offenders from those juveniles who can benefit from treatment and rehabilitation resources and programs that are available in the juvenile justice system. Transfer to the criminal court of those targeted juvenile offenders who have demonstrated through their behavior that they do not belong in the juvenile justice system (nature of offense or nonamenability to juvenile justice treatment) enables the juvenile justice system to focus its efforts and resources on the much larger group of high-risk juveniles, first-time less serious and violent or repeat offenders who can benefit from a wide range of effective intervention strategies. The Coordinating Council's National Juvenile Justice Action Plan supports individualized case reviews and proposes a two-tier system of extended jurisdiction in the juvenile court for serious, violent, and chronic juvenile offenders and consideration of innovative blended sentencing options for juvenile offenders under criminal court jurisdiction. This system would permit the transfer of some juvenile offenders, taking into account age, presenting offense, and offense history, and allow greater prosecutorial discretion for the older, more serious, and violent juvenile offender.

Comment: One writer stated that training for juvenile court judges under the current plan is commendable and needed but recommended that training focus more on the core requirements of the JJDP Act and issues surrounding State compliance.

Response: The judicial training program funded by OJJDP to the National Council of Juvenile and Family Court Judges (NCJFCJ) has addressed, to a major degree in past years, the core requirements of the Act and other related topics in comprehensive curriculums for juvenile and family court judges, probation officers, and others working in juvenile courtservices. However, OJJDP will consult with the NCJFCJ to determine whether the issues surrounding State compliance need to be reassessed in an upcoming training needs assessment.

Comment: A respondent suggested modified language to describe the Juvenile Justice Prosecution Unit.

Response: OJJDP accepts the recommended changes but notes that they do not materially revise the original project description.

Comment: Two respondents supported funding for the Sauk Centre Correctional Facility.

Response: OJJDP appreciates the letters of support for the Sauk Centre Correctional Facility in Minnesota. In 1994, the Centre was selected as one of three sites in the Nation to participate in the OJJDP-sponsored Correctional Education program. The Centre has participated in OJJDP-sponsored training and technical assistance and has developed plans for making education and learning a major component of its treatment program. The entire staff at the facility will be trained to use interactive teaching methods to work with the youth.

Comment: One respondent strongly suggested that OJJDP add a component that would research and recommend solutions to the nationwide critical shortage of secure juvenile housing space.

Response: OJJDP conducts the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities. This census collects information on the capacity of each facility, the number of juveniles housed there, and the security level of the facility. The information permits analysis of population levels compared to capacity. By computing population-to-capacity ratios, the Office can provide a greater understanding of crowding in all types of juvenile facilities. OJJDP is examining its data collection and reporting with regard to juvenile custody. As part of these developments, OJJDP will consider various measures of crowding. In the context of OJJDP's overall statistics development, the Office will also examine how best to disseminate information and research on capacity issues for both secure and nonsecure facilities. Issues around solutions to the problem of crowding will be considered in these activities.

Comment: One respondent asked that OJJDP include comprehensive day programs for adolescents and young adults with the dual classification of developmental disability and sexual offender/reactor. The writer pointed out that a structured day program can be an

extremely cost-effective alternative to residential treatment with outcomes of reintegration into the community, as opposed to isolation from the community.

Response: OJJDP agrees with the commentator about the importance of day programs. OJJDP is supporting replication of the Bethesda Day Treatment program in 10 sites in FY 1996, including the six SafeFutures sites. Bethesda Day is an intensive program that involves an alternative school and afterschool programs for high-risk and delinquent youth. A careful assessment process and a comprehensive case management system, in addition to extensive family involvement, make this a very successful model program. OJJDP will explore with Bethesda Day Treatment the application of the model to the dual-classification juvenile. In addition, each SafeFutures site has mental health service funds that can be used for this purpose.

Comment: Two respondents indicated a need to address the impact of mandatory provisions related to juvenile incarceration, such as limitations on holding time and the prohibition against juvenile and adult facilities being run by one person. One of the comments indicated that the mandatory provisions related to time, staff, and facility site and sound are sometimes unrealistic.

Response: The core requirements of OJJDP's Part B Formula Grants Program are under continuing review and evaluation to determine their efficacy and impact. OJJDP will continue to work with State and local governments to insure that these requirements work to protect juvenile offenders while continuing to provide law enforcement and human service agencies with sufficient flexibility.

Comment: One comment expressed interest in funding assistance for two alternative programs: Teen Court and House Arrest.

Response: OJJDP recognizes that teen court programs serve multiple purposes in helping to address problem behavior when youth are charged with alcohol use and other misdemeanor offenses. Teen courts are seen as an effective intervention in many jurisdictions where enforcement of such offenses is considered difficult or a low priority. Teen courts are included in OJJDP's Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders as a graduated sanction for jurisdictions to use in helping to send the message to youth that the community does not condone law-breaking behaviors. OJJDP views the teen court program as an excellent vehicle to help youth realize that they are accountable for their actions; to educate them on the impact of their actions, either positive or negative, on others in the community; and to offer a hands-on juvenile justice system experience for both the youthful offender and youth who volunteer for the program. To provide assistance to jurisdictions interested in establishing or enhancing a teen court program as an alternative response to juvenile crime, OJJDP has collaborated with the Department of Transportation on the soon-to-be-released publication entitled Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs.

OJJDP is committed to enhancing services for those juveniles who can benefit from treatment and rehabilitation in the juvenile justice system as well as protecting the public. One of the most recent and popular innovations has been the use of electronic monitoring, which provides an effective tool for the supervision of selected pre- and postadjudicated offender populations who remain in the community. OJJDP currently has an initiative to develop a set of guidelines and research protocols to assist juvenile justice program administrators and policymakers in the self-evaluation of their electronic monitoring programs.

Comment: OJJDP received four comments that supported the importance of delinquency prevention and early intervention, one writer calling it the most cost-effective means of dealing with future delinquency. One of the respondents also suggested that early intervention efforts might be strengthened by calling specifically for better character development in the home and in the schools. Another writer indicated that it is essential for OJJDP to maintain a holistic approach and continue to emphasize healthy youth development through prevention and remediation. The fourth comment expressed approval of the recognition of prosecutors as an integral part of prevention programming.

Response: OJJDP agrees with the suggestion that delinquency prevention and early intervention are critical components of a continuum-of-care system. Delinquency prevention and early intervention are key components of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The Comprehensive Strategy supports a holistic approach, emphasizing healthy youth development. One of the major themes of the Strategy is to ameliorate the impact of risk factors that interfere with healthy youth development. This year OJJDP released a report, Delinquency Prevention Works, which explains the importance of delinquency prevention and includes information about successful delinquency prevention models. The OJJDP-funded Program of Research on the Causes and Correlates of Delinquency is documenting that research-based, risk-focused prevention is the most cost-effective method for dealing with juvenile delinquency. Three of OJJDP's new initiatives support the principles of delinquency prevention: the development of Assessment Centers and the Child Abuse and Neglect and the Field-Initiated Research Programs.

The evaluation of the SafeFutures Program should provide important information on the value of comprehensive delinquency prevention and early intervention programming. OJJDP is working with a variety of agencies in the area of delinquency prevention, including the Center for Mental Health Services, the Center for Substance Abuse Prevention, and the Center for Substance Abuse Treatment, all part of the U.S. Department of Health and Human Services. OJJDP is also working with the health, child welfare, and education systems through several interagency workgroups and jointly funded programs.

OJJDP considers prosecutors to be an integral component of prevention and early intervention strategies and will continue working with prosecutors through the National District Attorneys Association.

Comment: In the area of training in risk-focused prevention strategies, one respondent suggested that consideration be given to matching future funds with U.S. Department of Housing and Urban Development State Block Grants in Economic Development Initiatives, Enterprise Zones, Neighborhood Development, and Community Adjustment Planning.

Response: OJJDP and the U.S. Department of Housing and Urban Development (HUD) are strengthening linkages between their respective programs in regard to risk-focused prevention strategies. Through an interagency agreement, HUD is working as a partner with OJJDP to provide training and technical assistance in public housing sites under OJJDP's SafeFutures Program. Both HUD and OJJDP, as well as Education, Labor, Treasury, and other divisions and bureaus within the Department of Justice, are members of the Youth Gang Consortium. Initiated in December 1995, the Consortium is facilitating coordination of gang program development, information exchange,

and service delivery nationwide. OJJDP is currently working directly with Empowerment Zones, Enterprise Communities, and Enhanced Enterprise Communities (EZ/EC/EEC's) under several major initiatives. Four of the six SafeFutures sites are located in EC/EEC's and are receiving hands-on technical assistance and training in risk-focused prevention. Seventeen EZ/EC/EEC's are receiving training in implementing a comprehensive youth-focused community policing strategy in their communities under a joint program with the Office of Community Oriented Policing and Community Relations Service. Other EZ/EC/EEC initiatives will come online in FY 1996, including Youth Out of the Education Mainstream, a joint program of the Departments of Justice and Education.

Comment: Two respondents expressed concern that the proposed plan did not include mental health needs of youth in the juvenile justice system and asked that some discretionary funds be set aside for mental health programs. One of the writers stressed that all components of the juvenile justice system must work together and also work with the private sector, teaching hospitals, and family members to minimize further mental health problems for at-risk youth and at the same time protect the public.

Response: OJJDP has provided leadership in addressing mental health issues in the juvenile justice system. In 1995, OJJDP supported a mental health conference, ''Caring for Every Youth's Mental Health: An Issue Inseparable From Youth Crime,'' and jointly sponsored the ''Early Intervention Childhood System of Care Conference'' in Atlanta, Georgia. With the Department of Education, OJJDP also cosponsored a 1996 conference, ''Making Collaboration Work for Children, School, Families, and Community,'' which included a range of mental health issues.

The State Challenge Grant Program includes a provision for the support of mental health programs. To date, 13 States have selected this area as one of their challenge activities. In addition, OJJDP is working with the Center for Mental Health Services to determine innovative ways in which to collaborate in the development and implementation of mental health programs for juveniles in the juvenile justice system.

Finally, mental health is a key component of OJJDP's SafeFutures Program. The six sites have each been allocated $150,000 per year to address the mental health needs of juveniles in the juvenile justice system, with a focus on services for juveniles with learning disabilities, mental disorders, and juvenile sex offenses.

Comment: One respondent stressed that substance abuse is a critical issue with almost all juvenile offenders.

Response: OJJDP concurs with this observation. In FY 1996, OJJDP will continue four major drug- and alcohol-related programs, will work with the American Probation and Parole Association, and will collaborate with the Office of National Drug Control Policy in expanding related programs in FY 1997.

Comment: Two writers commented on OJJDP's training and technical assistance for family strengthening services. One urged that available funds for new programs be allocated to prevention and to strengthening families. Another respondent faulted the proposed plan for not addressing the need to teach moral responsibility in the family unit.

Response: The Office acknowledges the value of prevention and the importance of the family's role in delinquency prevention. The training and technical assistance program endeavors to strengthen families by assisting communities to enhance the range of available family support services and programs. OJJDP believes that each community knows best the types of services that need to be made available to its families. Consequently, this program seeks to increase the capacity of communities to identify and implement programs that meet the diverse needs of its families.

Comment: Addressing the proposed program to establish a community-based approach to combating child victimization, one writer commended OJJDP for targeting child victims as a priority area and for providing assistance to create a better system to protect children and support professionals who work with these families. The letter also contained three suggestions. First, spread the net as wide as possible, instead of narrowly restricting what type of entities may apply. Second, provide a ''big tent,'' by not overly restricting what other initiatives must be in place unless directly related and necessary for a child welfare reform effort. Third, do not require match to be in dollars, but instead accept in-kind match.

Response: The three points the author raises are valid suggestions that the Office will take into consideration in developing the competitive solicitation for this program.

Comment: Three respondents praised OJJDP's emphasis on collaboration. Two of these comments also raised specific issues. One pointed out areas where enhanced collaboration would be beneficial: adoption opportunities, maternal and child health programs (including teen pregnancy prevention), family preservation, runaway/homeless youth, information management, data collection, and evaluation. The other respondent noted that, although collaboration was identified as an important part of the plan, no reference was made to the parties that are minimally expected to be involved in collaborative efforts.

Response: The introduction to the program plan, and many of the program descriptions in the plan, refer to OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and the Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. These documents provide a context for OJJDP's plan, including Title V prevention grants and other programs outside the scope of the plan. The Guide provides communities with a framework for preventing delinquency, intervening in early delinquent behavior, and responding to serious, violent, and chronic offending. A key aspect of this framework and the Title V training includes a step-by step process for convening key leaders in a community to be a part of a collaborative process. Although adoption, runaway/homeless services, information managers, data collectors, and evaluators are not explicitly stated as required participants in such a collaborative process, there is no reason why they would not be included. In various programs, OJJDP provides specific guidance as to the type of groups that should be involved in the program. However, in view of varied local needs, priorities, resources, and existing planning and service delivery systems, OJJDP does not see a need to go beyond providing general guidance on the range of participants.

Introduction to Fiscal Year 1996 Program Plan

Intolerably high rates of juvenile violence and delinquency, victimization, school drop out, teen pregnancy, illegal drug use, and child abuse and neglect are plaguing our country. In jurisdictions across the Nation, over-burdened juvenile justice and dependency court systems are being held accountable for redressing the results of unstable families lacking parenting skills, communities with inadequate health and mental health support networks, fragmented social service delivery systems, a shortage of constructive activities for young people, and easy access to guns and drugs. They lack the resources necessary to respond

to serious, violent, and chronic delinquency, to hold juveniles accountable, and to turn back the tide of increasing violent delinquency by providing early intervention services for at-risk juveniles and their families.

The OJJDP fiscal year 1996 Comprehensive Plan seeks to support programming that is built on sound research and strengthens collaborations needed to empower the juvenile justice and dependency court systems to work effectively with communities in preventing and controlling delinquency and reducing juvenile victimization.

In 1993, OJJDP published a Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Comprehensive Strategy). Designed to provide a response to the social crisis we are facing, the Comprehensive Strategy utilizes statistics, research, and program evaluations as the basis for a set of sound principles for establishing a continuum of care for our children. The Comprehensive Strategy emphasizes the importance of local planning teams assessing the factors which put youth at risk for delinquency, determining available resources, and putting in place prevention programs that either reduce those risk factors or provide protective factors that buffer juveniles from the impact of risk factors. The Comprehensive Strategy also stresses the importance of early intervention for juveniles whose behavior puts them on one or more pathways to delinquency and of having a system of graduated sanctions that can ensure immediate and appropriate accountability and treatment for juvenile offenders.

During FY 1995 OJJDP published a Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Guide). The Guide provides information on the process of identifying risk and protective factors in the community and offers detailed information about programs known to prevent delinquency or reduce recidivism. By providing a foundation and framework for each community's individualized strategy, the Guide can serve as a powerful tool for States, cities, counties, and neighborhoods that are mobilizing to address the problem of juvenile violence and delinquency.

The Comprehensive Strategy also served as the foundation for the development of the National Juvenile Justice Action Plan (Action Plan), recently published by the Coordinating Council on Juvenile Justice and Delinquency Prevention in March. The Action Plan provides an additional resource to communities that seek to balance vigorous enforcement of the law and prevention services in order to reduce juvenile delinquency and violence. The Action Plan prioritizes Federal activities and resources under eight critical objectives, each of which needs to be addressed in order to effectively combat delinquency and violence. The Action Plan describes grants, training, technical assistance, information dissemination, and research and evaluation activities that will assist jurisdictions to: (1) strengthen their juvenile justice systems; (2) prosecute certain serious, violent and chronic juvenile offenders in the criminal justice system; (3) target youth gun, gang, and drug violence through comprehensive policing and prevention techniques; (4) create positive opportunities for youth; (5) break the cycle of violence by addressing child victimization, abuse, and neglect; (6) mobilize communities into effective partnerships for change; (7) conduct research and evaluate programs; and (8) develop a public education campaign in order to both get the message out about successes in addressing juvenile delinquency and violence and rebuild confidence in every community's ability to impact this serious problem. These are the activities that the research, as well as numerous expert commissions on at-risk children, youth, families, and communities, indicates are necessary to make a lasting difference. It is these activities, coupled with the Comprehensive Strategy implementation, that form the basis of OJJDP's 1996 Program Plan.

The Program Plan supports a balanced approach to aggressively addressing juvenile delinquency and violence through graduated sanctions, improving the juvenile justice system's ability to respond, and preventing the onset of delinquency. It takes into account the short term need to ensure public safety and the long term imperative of supporting children's development into healthy, productive citizens through a range of prevention, early intervention, and graduated sanctions programs.

Three major new program areas were identified through a process of engaging OJJDP staff, other Federal agencies, and juvenile justice practitioners in an examination of existing programs, research findings, and the needs of the field. They are: (1) Developing one-stop, community-based intake, assessment, and case referral centers and programs for juveniles who may require services or juvenile justice system interventions; (2) supporting the linkage between community and law enforcement responses to youth gun violence; and (3) improving the dependency and criminal court system's and the community's response to child abuse and neglect. In addition, a range of research and evaluation projects that will expand our knowledge about juvenile offenders, the effectiveness of prevention, intervention, and treatment programs, and the operation of the juvenile justice system have been identified for FY 1996 funding.

Enhanced program support in the area of disproportionate minority confinement, gender-specific services, and technical assistance to Native American Tribes, would also be provided. Combined with OJJDP programs being continued in FY 1996, these new demonstration and support programs form a continuum of programming that supports the objectives of the Action Plan and mirrors the foundation and framework of the Comprehensive Strategy.

These continuation activities and programs and the new FY 1996 programs are at the heart of OJJDP's categorical funding efforts. For example, while focusing on the development of assessment centers as a new area of programming, OJJDP will continue to offer training seminars in the Comprehensive Strategy and look to the SafeFutures program to implement the Comprehensive Strategy model under existing grants and contracts. Combined, these activities provide a holistic approach to prevention and early intervention programs while enhancing the juvenile justice system's capacity to provide immediate and appropriate accountability and treatment for juvenile offenders.

OJJDP's Part D Gang Program will continue to support a range of comprehensive prevention, intervention, and suppression activities at the local level, evaluate those activities, and inform communities about the nature and extent of gang activities and effective and innovative programs through OJJDP's National Youth Gang Center. Similarly, the demonstration program focusing on juvenile gun violence will complement existing law enforcement and prosecutorial training programs by supporting grassroots community organization's efforts to address juvenile access to, carriage, and use of guns. This programming will build upon OJJDP's youth-focused community policing, mentoring, and conflict resolution initiatives, as well as programming in the area of drug abuse prevention, such as funding to the Congress of National Black Churches and the National Center for Neighborhood Enterprise for local church and neighborhood-based drug abuse prevention programs.

In support of the need to break the cycle of violence, OJJDP's new demonstration program to improve linkages between the dependency and criminal court systems, child welfare and social service providers, and family strengthening programs will complement ongoing support of Court Appointed Special Advocates, Child Advocacy Centers, and prosecutor and judicial training in the dependency field, funded under the Victims of Child Abuse Act of 1990, as amended.

The Plan's research and evaluation programming will support many of the above activities by filling in critical gaps in our knowledge about the level and seriousness of juvenile crime and victimization, its causes and correlates, and effective programs in preventing delinquency and violence. At the same time, OJJDP's research efforts will also be geared toward efforts that monitor and evaluate the ways juveniles are treated by the juvenile and criminal justice systems and any trends in this response, particularly as they relate to juvenile violence and its impact.

OJJDP is also utilizing its national perspective to disseminate information to those at the grassroots level—practitioners, policy makers, community leaders, and service providers who are directly responsible for planning and implementing policies and programs that impact on juvenile crime and violence.

OJJDP will continue to fund longitudinal research on the causes and correlates of delinquency, the findings of which are shared regularly with the field through OJJDP publications, utilize state-of-the-art technology to develop and disseminate an interactive CD-ROM on programs that work to prevent delinquency and reduce recidivism, air national satellite teleconferences on key topics of relevance to practitioners, and publish new reports and documents on timely topics such as school-based conflict resolution, curfews, the Federal Educational Records Privacy Act, confidentiality of juvenile court records, innovative sentencing options, and strategies to reduce youth gun violence.

The various contracts, grants, cooperative agreements, and interagency fund transfers described in the Program Plan form a continuum of activity designed to address the crisis of youth violence and delinquency in our Nation. In isolation, this programming can do little. However, the emphasis of OJJDP's programming is on collaboration. It is through collaboration that Federal, State, and local agencies; Native American Tribes; national organizations; private philanthropies; the corporate and business sector; health; mental health and social service agencies; schools; youth; families; and clergy can come together to form partnerships and leverage additional resources, identify needs and priorities, and implement innovative strategies. Together, we can make a difference.

Fiscal Year 1996 Programs

The following are brief summaries of each of the new and continuation programs for FY 1996. As indicated above, the program categories are public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse, neglect, and dependency courts. However, because many programs have significant elements of more than one of these program categories, or generally support all of OJJDP's programs, they are listed in an initial program category called ''Overarching Programs''. The specific program priorities within each category are subject to change with regard to their priority status, sites for implementation, and other descriptive data and information based on the review and comment process, grantee performance, application quality, fund availability, and other factors.

A number of programs contained in this document have been identified for funding by Congress with regard to the grantee(s), the amount of funds, or both. Such programs are indicated by an asterisk (*). The 1996 Appropriations Act Conference Report for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Programs identified six programs for OJJDP to examine and fund if warranted. One of these programs is included in the Plan for continuation funding. The remaining five will receive careful consideration for funding in FY 1996.

Fiscal Year 1996 Program Listing

Overarching

Program of Research on the Causes and Correlates of Delinquency
Field-Initiated Research
Evaluation of SafeFutures
OJJDP Management Evaluation Contract
Juvenile Justice Statistics and Systems Development
Research Program on Juveniles Taken into Custody—NCCD
Juveniles Taken into Custody—Interagency Agreement
Children in Custody—Census
Juvenile Justice Data Resources
National Juvenile Court Data Archive*
National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center
Technical Assistance for State Legislatures
OJJDP Technical Assistance Support Contract—JJRC
Juvenile Justice Clearinghouse
Telecommunications Assistance
Coalition for Juvenile Justice
Insular Area Support*

Public Safety and Law Enforcement

Kids and Guns: Reducing Youth Gun Violence
Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Targeted Outreach with a Gang Prevention and Intervention Component (Boys and Girls Clubs)
National Youth Gang Center
Child-Centered Community-Oriented Policing
Law Enforcement Training and Technical Assistance Program
Violence Studies*
Hate Crimes

Strengthening the Juvenile Justice System

Development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Serious, Violent, and Chronic Juvenile Offender Treatment Program
Community Assessment Centers
Juvenile Restitution: A Balanced Approach
Training and Technical Assistance Program to Promote Gender-Specific Programming for Female Juvenile Offenders
Technical Assistance to Native American Programs
National Indicators of Juvenile Violence and Delinquent Behavior and Related Risk Factors
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression
Evaluation of Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Juvenile Mentoring Program (JUMP) Evaluation
Juvenile Transfers to Criminal Court Studies
Technical Assistance to Juvenile Courts*
Juvenile Court Judges Training*
The Juvenile Justice Prosecution Unit
Due Process Advocacy Program Development
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Training and Technical Assistance for National Innovations to Reduce Disproportionate Minority

Confinement (The Deborah Wysinger Memorial Program)
Juvenile Probation Survey Research
Improvements in Correctional Education for Juvenile Offenders
Performance-Based Standards for Juvenile Detention and Corrections Facilities
Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)
Training for Juvenile Corrections and Detention Staff
Training for Line Staff in Juvenile Detention and Corrections
Training and Technical Support for State and Local Jurisdictional Teams to Focus on Juvenile Corrections and Detention Overcrowding
National Program Directory

Delinquency Prevention and Intervention

Training In Risk-Focused Prevention Strategies
Youth-Centered Conflict Resolution
Pathways to Success
Teens, Crime, and the Community: Teens in Action in the 90s*
Law-Related Education
Cities in Schools—Federal Interagency Partnership
Race Against Drugs
The Congress of National Black Churches: National Anti-Drug Abuse/Violence Campaign (NADVC)
Community Anti-Drug Abuse Technical Assistance Voucher Project
Training and Technical Assistance for Family Strengthening Services
Henry Ford Health System*
Jackie Robinson Center*

Child Abuse and Neglect and Dependency Courts

A Community-Based Approach to Combating Child Victimization
Permanent Families for Abused and Neglected Children*
Parents Anonymous, Inc.*
Lowcountry Children's Center, Inc.*

Overarching

Program of Research on the Causes and Correlates of Delinquency

Three projects sites comprise the Program of Research on the Causes and Correlates of Delinquency: The University of Colorado at Boulder, the University of Pittsburgh, and the State University of New York at Albany. The main purpose of FY 1996 funding will be to support additional data analyses in support of OJJDP program development. Results from this program have been used extensively in the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other program initiatives.

OJJDP began funding this program in 1986 and has invested approximately $10 million to date. The program has addressed many issues of juvenile violence and delinquency. These include developing and testing causal models for chronic violent offending and examining interrelationships among gang involvement, drug selling, and gun ownership/use. To date, the Program has produced a massive amount of information on the causes and correlates of delinquent behavior.

Although there is great commonality across the projects, each has unique design features. Additionally, each project has disseminated the results of its research through a variety of publications, reports, and presentations.

With FY 1996 funding, each site of the Causes and Correlates Program will be provided additional funds to further analyze the longitudinal data. New publications, including two joint publications, will be developed in FY 1996 and both the role of mental health in delinquency and pathways to delinquency will be the subject of further analyses.

This program will be implemented by the current grantees, Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, State University of New York at Albany. No additional applications will be solicited in FY 1996.

Field-Initiated Research

Through the FY 1996 Field-Initiated Research program, OJJDP will solicit innovative programs that address critical research and evaluation needs of the juvenile justice field. Priority research topics include: youth gangs in residential facilities; mental health issues; waiver and transfer to the juvenile justice system; reporting of child victimization; improving data collaboration efforts between juvenile justice, child welfare, child protective services, and mental health; institutional crowding; and topics related to OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. In addition to research topics, this program will also entertain proposals from State and local agencies wishing to conduct evaluations of programs initiated with OJJDP Formula, Title V, and discretionary funds that appear to be having significant impact and offer a possibility for national replication.

OJJDP will issue a competitive solicitation for this initiative in FY 1996.

Evaluation of SafeFutures

With FY 1995 funds, OJJDP funded six communities under the SafeFutures: Partnerships to Reduce Youth Violence and Delinquency Program. The program sites are: Contra Costa County, California; Fort Belknap Indian Community, Montana; Boston, Massachusetts; St. Louis, Missouri; Seattle, Washington; and Imperial County, California. The SafeFutures Program provides support for a comprehensive prevention, intervention, and treatment program to meet the needs of at-risk juveniles and their families.

Approximately $8 million will be made available for annual awards over a 5-year project period to support the efforts of these jurisdictions to enhance existing partnerships, integrate juvenile justice and social services, and provide a continuum of care that is designed to reduce the number of serious, violent, and chronic juvenile offenders.

The Urban Institute received a competitive 3-year Phase I cooperative agreement award with FY 1995 funds to provide a national evaluation of the SafeFutures program. The evaluation will consist of both process and impact components for each funded site. The evaluation process includes an examination of planning procedures and the extent to which each site's implementation plan is consistent with the principles of a continuum of care/graduated sanctions model. The evaluation will identify the obstacles and key factors contributing to the successful implementation of the SafeFutures continuum of care model. The evaluator is responsible for developing a cross-site monograph documenting the process of program implementation for use by other communities that want to develop and implement a comprehensive community-based strategy to address serious, violent, and chronic delinquency.

A FY 1996 supplemental award will be made to the current grantee, the Urban Institute, to complete first year funding. No additional applications will be solicited in FY 1996.

OJJDP Management Evaluation Contract

The purpose of this contract, competitively awarded in FY 1995 to Caliber Associates, is to provide to OJJDP an expert resource capable of performing independent, management-oriented evaluations of selected OJJDP programs. These evaluations are designed to determine the effectiveness and efficiency of either individual projects or groups of projects. The

contractor also assists OJJDP in determining how to make the best use of limited evaluation resources and how best to design and implement evaluations. Work plans that have been requested or will be requested from the contractor in FY 1996 include: continuing the evaluation of three OJJDP-funded bootcamps; continuing to support the evaluation of Title V delinquency prevention programs at the local level; preparation of OJJDP's Title V Program report to Congress; providing assistance to OJJDP program development working groups; assisting OJJDP in the creation of an ''evaluation partnership for juvenile justice'' designed to improve the number and quality of evaluations conducted by Formula Grants Program grantees, other Federal agencies, private foundations that fund evaluations, and State and local governments; and conducting other short- or long-term evaluations as required. The contract will be performed by the current contractor, Caliber Associates. No additional applications will be solicited in FY 1996.

Juvenile Justice Statistics and Systems Development

The Juvenile Justice Statistics and Systems Development (SSD) Program was competitively awarded to the National Center for Juvenile Justice (NCJJ) in FY 1990 to improve national, State, and local statistics on juveniles as victims and offenders. The project has focused on three major functions: (1) Assessment of how current information needs are being met with existing data collection efforts and recommending options for improving national level statistics; (2) analyzing data and disseminating information gathered from existing Federal statistical series and national studies. Based on this work, OJJDP released the first ''Juvenile Offenders and Victims: A National Report'' in September 1995; and (3) provision of training and technical assistance for local agencies in developing or enhancing management information systems. A training curriculum, ''Improving Information for Rational Decision making in Juvenile Justice,'' was drafted for pilot testing.

In this final phase of the SSD project, NCJJ will complete a long-term plan for improving national statistics on juveniles as victims and offenders, including constructing core data elements for a national reporting program for juveniles waived or transferred to criminal court, an implementation plan for integrating data collection on juveniles by juvenile justice, mental health, and child welfare agencies, and a report on standardized measures and instruments for self-reported delinquency surveys. The project will also make recommendations to fill information gaps in the areas of juvenile probation, juvenile court and law enforcement responses to juvenile delinquency, violent delinquency, and child abuse and neglect. In addition, the SSD Project will provide an update of Juvenile Offenders and Victims: A National Report, and work with the Office of Justice Programs, Crime Statistics Working Group and other Federal interagency working groups on statistics. The project will be implemented by the current grantee, NCJJ. No additional applications will be solicited in FY 1996.

Research Program on Juveniles Taken Into Custody—NCCD

The Research Program on Juveniles Taken into Custody was designed and implemented in FY 1989 in response to a growing need for comprehensive juvenile custody data. The project now has the participation of all State juvenile corrections agencies. Each year the project produces a report on juveniles taken into custody. In FY 1996, the National Council on Crime and Delinquency (NCCD) will continue to refine the State Juvenile Correctional System Reporting Program. It is anticipated that individual-level data for 1996 will be representative of more than 85 percent of the at-risk juvenile population. In addition, NCCD will prepare reports, including the annual Juveniles Taken Into Custody report, providing a detailed summary and analysis of the most recent data regarding: (1) The number and characteristics of juveniles taken into custody; (2) the rate at which juveniles are taken into custody; and (3) the trends demonstrated by the data.

This program will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1996.

Juveniles Taken Into Custody (JTIC)—Interagency Agreement

OJJDP will continue its program to improve the collection of juvenile custody data through an interagency agreement with the Bureau of the Census. This agreement provides for the collection and processing of individual-level data on juveniles under State correctional custody. The Census Bureau and OJJDP have developed close working relationships with State juvenile corrections agencies. Through these relationships, OJJDP has developed a program to collect data on each juvenile in State custody and the Census Bureau has developed an understanding of the State data that allows for ''translation'' of State information to a national format. Each year since 1990, the Census Bureau has collected this information and processed it for analysis by the National Council on Crime and Delinquency (NCCD).

The resulting analyses are published in OJJDP's annual Juveniles Taken Into Custody report, which is disseminated to practitioners and planners, and are used to meet statutory information requirements in OJJDP's Annual Report to the President and Congress.

The program will be implemented in FY 1996 by the Bureau of the Census under an interagency agreement.

Children in Custody—Census

Under this ongoing collaborative program between OJJDP and the U.S. Bureau of the Census, OJJDP will transfer funds to the Census Bureau to complete the 1995 biennial census of public and private juvenile detention, correctional, and shelter facilities. The census describes juvenile custody facilities in terms of their resident population, programs, and physical characteristics. It also provides data on trends in the use of juvenile custody facilities for delinquent juveniles and status offenders. These data are analyzed and included in OJJDP's annual Juveniles Taken Into Custody report and other statistical reports.

The Census Bureau's Center for Survey Methods Research will also continue to develop and test a roster-based data collection system designed to enhance information collected on juveniles in custody beginning with the 1997 biennial census. Finally, the Bureau's Governments Division will continue its efforts to develop a complete directory of juvenile justice facilities and programs. This directory will serve as the frame for conducting the 1997 census and other future surveys. It will contain basic information on each facility that is necessary for creating representative samples. It will also contain basic administrative information to be used in conducting the census.

The program will be implemented by the U.S. Bureau of the Census under an existing interagency agreement.

Juvenile Justice Data Resources

OJJDP has entered into an agreement with the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan to make OJJDP data sets routinely available to researchers. Under this agreement, ICPSR assures the technical integrity

and develops a universal format for the data. The codebooks, along with the data, provide clear guidance for additional analyses. Once prepared, ICPSR provides access to these data sets to member institutions and the public. Among the data sets previously processed and available through ICPSR are the Children in Custody Census (1971–1991); the Conditions of Confinement Study; and the National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMART).

This program will be implemented under an interagency agreement with ICPSR. No additional applications will be solicited in FY 1996.

National Juvenile Court Data Archive*

The National Juvenile Court Data Archive collects, processes, analyzes, and disseminates automated data and published reports from the Nation's juvenile courts. The Archive's reports examine referrals, offenses, intake, and dispositions, in addition to providing specialized topics such as minorities in juvenile courts and information on specific offense categories. The Archive also provides assistance to jurisdictions in analyzing their juvenile court data. In 1995, this project produced a bulletin, Offenders in Juvenile Court 1992, and a report, Juvenile Court Statistics 1992, along with a number of OJJDP Fact Sheets and special analyses.

In FY 1996, the Archive will enhance the collection, reporting, and analysis of more detailed data on detention, dispositions, risk factors, and treatment data using offender-based data sets from a sample of juvenile courts.

The project will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in FY 1996.

National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was competitively funded in FY 1995 for a 3-year project period to develop a national training and technical assistance clearinghouse, inventory juvenile justice training/technical assistance resources, and establish a data base with respect to these resources.

In FY 1995, work involved organization and staffing of the Center, providing an orientation for OJJDP training and technical assistance providers regarding their role in the Center's activities, and initial data base development.

In FY 1996, NTTAC will conduct needs assessments, support training/technical assistance program development, promote collaboration between OJJDP training/technical assistance providers, develop training/technical assistance materials, and promote evaluation of OJJDP-supported training and technical assistance. In addition, NTTAC will prepare program materials and implement specialized training, including training-of-trainers programs, and develop standards and procedures for academic/professional accreditation/certification of OJJDP training and trainers. NTTAC provides a single, central source for information pertaining to the availability of OJJDP supported training/technical assistance programs and will publish and maintain an up-to-date catalog of such programs.

This project will be implemented by the current grantee, Community Research Associates. No additional applications will be solicited in FY 1996.

Technical Assistance for State Legislatures

State legislatures are being pressed to respond to public fear of juvenile crime and a loss of confidence in the capability of the juvenile justice system to respond effectively. For the most part, State legislatures have had insufficient information to properly address juvenile justice issues. In FY 1995, OJJDP awarded a two-year grant to the National Conference of State Legislators (NCSL) to provide relevant, timely information on comprehensive approaches in juvenile justice that are geared to the legislative environment. In FY 1995, NCSL convened a Leadership Forum with invited legislators; convened several focus groups; and established an information clearinghouse function. In FY 1996, OJJDP will award second-year funding to the NCSL to further identify, analyze, and disseminate information to help State legislatures make more informed decisions about legislation affecting the juvenile justice system. A complementary task will involve supporting increased communication between State legislators and State and local leaders who influence decision making regarding juvenile justice issues. NCSL will provide technical assistance to four States, will continue outreach activities, and maintain its clearinghouse function.

The project will be implemented by the current grantee, NCSL. No additional applications will be solicited in FY 1996.

OJJDP Technical Assistance Support Contract: Juvenile Justice Resource Center

This 3-year contract, competitively awarded in FY 1994, provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. This program support contract will be supplemented in FY 1996. The contract will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 1996.

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) is OJJDP's central source for the collection, synthesis, and dissemination of information on all aspects of juvenile justice, including research and evaluation findings: State and local juvenile delinquency prevention and treatment programs and plans; availability of resources; training and educational programs; and statistics. JJC serves the entire juvenile justice community, including researchers, law enforcement officials, judges, prosecutors, probation and corrections staff, youth-service personnel, legislators, the media, and the public.

Among its many support services, JJC offers toll-free telephone access to information: prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and administers several electronic information resources. Recognizing the critical need to inform juvenile justice practitioners and policy makers on promising program approaches, JJC continually develops and recommends new products and strategies to communicate more effectively the research findings and program activities of OJJDP and the field. The entire NCJRS, of which the OJJDP-funded JJC is a part, is administered by the National Institute of Justice under a competitively awarded contract. The project will be implemented by the current grantee, Aspen Systems Corporation. No additional applications will be solicited in FY 1996.

Telecommunications Assistance

Developments in information technology and distance training can expand and enhance OJJDP's capacity to disseminate information and provide

training and technical assistance. These technologies have the following advantages when used properly: increased access to information and training for persons in the juvenile justice system; reduced travel costs to conferences; and reduced time attending meetings requiring one or more nights away from one's home or office. Additionally, the successful use of ''live'' satellite teleconferences by OJJDP during the past year has generated an enthusiastic response from the field.

During the past twelve months the grantee has produced four live satellite teleconferences on the following topics: Community Collaboration for Delinquency Prevention; Model Juvenile Correctional Programs for Serious, Violent, Chronic Offenders; Youth Focused Community Policing; and Juvenile Boot Camps.

OJJDP will continue the competitive cooperative agreement award to Eastern Kentucky University in 1994 to provide program support and technical assistance for a variety of information technologies, including audio-graphics, satellite teleconferences, and fiber optics. The grantee will also continue to provide limited technical assistance to other grantees interested in using this technology and explore linkages with key constituent groups to advance mutual goals and objectives. This project will be implemented by the current grantee, Eastern Kentucky University. No additional applications will be solicited in FY 1996.

Coalition for Juvenile Justice

The Coalition for Juvenile Justice supports and facilitates the purposes and functions of each State's Juvenile Justice State Advisory Group (SAG). The Coalition, acting as a statutorily authorized, duly chartered Federal advisory committee, reviews Federal policies and practices regarding juvenile justice and delinquency prevention, and prepares and submits an annual report and recommendations to the President, Congress, and the Administrator of OJJDP. The Coalition also serves as an information center for the SAGs and conducts an annual conference to provide training for SAG members. The program will be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications will be solicited in FY 1996.

Insular Area Support*

The purpose of this program is to provide supplemental financial support to the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act, as amended, 42 U.S.C. 5665(e).

Public Safety and Law Enforcement

Kids and Guns: Reducing Youth Gun Violence

This project is intended to enhance the effectiveness of comprehensive youth gun violence reduction efforts by supporting innovative local community-generated strategies. Under a competitive announcement, OJJDP will fund community-based organizations, local units of government, and State agencies if they can demonstrate that the program will be community-based, to strengthen their linkages to broader youth gun violence reduction efforts.

Applicants will be encouraged to: be creative in designing initiatives for the prevention, intervention, and reduction of youth gun violence in targeted neighborhoods; coordinate their efforts with other community-based law enforcement initiatives, youth-serving organizations, crime victim organizations, and the juvenile justice system; and collaborate with these agencies to evaluate program effectiveness. Applicants will also be required to show that their proposed initiative reflects current youth gun violence research and a local assessment of youth access to guns, why young people carry guns, and why they use them.

OJJDP will support an independent evaluation of this project that focuses on collecting and analyzing data on the program implementation process. The evaluator will design an impact evaluation in collaboration with OJJDP and an approved advisory board.

The Reducing Youth Gun Violence project will be competitively funded in up to three sites with a 2-year project period. The evaluation will be competitively funded under a cooperative agreement to a single grantee for a 3-year project period.

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

This program supports the implementation of a comprehensive gang program model in five jurisdictions. The program was competitively awarded with FY 1994 funds under a 3-year project period. The demonstration sites implementing the model, developed with OJJDP funding support by the University of Chicago, are: Mesa, Arizona; Tucson, Arizona; Riverside, California; Bloomington, Illinois; and San Antonio, Texas. Implementation of the comprehensive gang program model requires the mobilization of the community to address gang-related violence by making available social interventions, providing social/academic/vocational and other types of opportunities, supporting gang suppression through law enforcement, prosecution and other community control mechanisms, and supporting organizational change and development in community agencies to more effectively address gang violence prone youth.

During the past year, the demonstration sites began an ongoing problem assessment process to identify the full nature and extent of the gang problem in the community and its potential causes. The assessment process will also help communities to understand what may cause gang violence in their community and to identify benchmarks by which program success may be measured. The demonstration sites also participated in training and technical assistance activities, including two cluster conferences sponsored by OJJDP. In addition, the demonstration sites began strategy implementation and service provision and made progress in community mobilization, either through existing planning structures or by creating new structures.

In FY 1996, demonstration sites will receive second year funding to continue implementation of the model program and build upon the sustained mobilization, planning and assessment processes. Additionally, the demonstration sites will continue to target youth prone to gang violence through continuing implementation of the program model and work with the independent evaluator of this demonstration program. No additional applications will be solicited in FY 1996.

Targeted Outreach With a Gang Prevention and Intervention Component (Boys and Girls Clubs)

This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them from gang activities into more constructive programs. In FY 1996, Boys and Girls Clubs of America would provide training and technical assistance to existing gang prevention and intervention sites and expand the gang prevention and intervention program to 30 additional Boys and Girls

Clubs, including those in SafeFutures sites. This program will be implemented by the current grantee, the Boys and Girls Clubs of America. No additional applications will be solicited in FY 1996.

National Youth Gang Center

The proliferation of gang problems ranging from large inner cities to smaller cities, suburbs, and even rural areas over the past two decades led to the development by OJJDP of a comprehensive, coordinated response to America's gang problem. This response involves five program components, one of which is the implementation and operation of the National Youth Gang Center (NYGC). The NYGC was competitively funded with FY 1994 funds for a three-year project period. The purpose of the NYGC is to expand and maintain the body of critical knowledge about youth gangs and effective responses to them. NYGC assists State and local jurisdictions in the collection, analysis, and exchange of information on gang-related demographics, legislation, research, and promising program strategies. The Center also coordinates activities of the OJJDP Gang Consortium—a group of Federal agencies, gang program representatives, and service providers. Other major tasks include statistical data collection and analysis on gangs, analysis of gang legislation, gang literature review, identification of promising gang program strategies, and gang consortium coordination activities.

Fiscal Year 1996 funds will support second year funding of the NYGC cooperative agreement to the current grantee, the Institute for Intergovernmental Research. No additional applications will be solicited in FY 1996.

Child Centered Community-Oriented Policing

In FY 1993, OJJDP provided support to the New Haven, Connecticut Police Department and the Yale University Child Development Center to document a child-centered, community-oriented policing model being implemented in New Haven, Connecticut. The basic elements of the model are a 10-week training course in child development for all new police officers and child development fellowships for all community-based district commanders who direct neighborhood police teams. The fellowships provide 4 to 6 hours of training each week over a 3-month period at Yale's Child Study Center. The program also includes: (1) a 24-hour consultation from a clinical professional and a police supervisor to patrol officers who assist children who have been exposed to violence; (2) weekly case conferences with police officers, educators, and child study center staff; and (3) open police stations, located in neighborhoods and accessible to residents for police and related services, community liaison, and neighborhood foot patrols.

In FY 1994, BJA community policing funds helped support the first year of a 3-year training and technical assistance grant to replicate the program nationwide. These funds supported the development of criteria for a request for proposals, protocols for consultation, train-the-trainer sessions for New Haven police and clinical faculty, and the development of a multi-model strategy for data collection and program evaluation. Fiscal Year 1995 OJJDP funds supported continuation of the project's expansion in up to four replication sites.

Fiscal year 1996 funds will support the implementation of the five-phase replication protocol in the four selected sites, replication site data collection and analysis activities, and development of a detailed casebook about the model and program.

This project will be implemented by the current grantee, the Yale University School of Medicine. No additional applications will be solicited in FY 1996.

Law Enforcement Training and Technical Assistance Program

This continuation award will supplement the 3-year law enforcement and technical assistance support contract, competitively awarded in FY 1994 to Fox Valley Technical College in Appleton, Wisconsin. Fiscal year 1996 funds will be used to continue to provide services under the nationwide training and technical assistance program designed to improve law enforcement's capability to respond to juvenile delinquency, to contribute to delinquency prevention, and to address issues of missing and exploited children and child abuse and neglect. Technical assistance under this contract is provided in response to a wide variety of requests from Federal, State, county, and local agencies with responsibility for the prevention and control of juvenile delinquency and juvenile victimization. The contract supports continuation of the Gang, Gun, and Drug Policy Training Program, the Police Operations Leading to Improved Children and Youth Services series of training programs, a Native American Law Enforcement Training Program, and a variety of other law enforcement training programs offered by OJJDP.

This contract will be implemented by the current contractor, Fox Valley Technical College. No additional applications will be solicited for award of FY 1996 funds.

Violence Studies*

The 1992 Amendments to the JJDP Act required OJJDP to fund two-year studies on violence in three urban and one rural jurisdiction. Building on the results of OJJDP's Program of Research on the Causes and Correlates of Delinquency, these studies were to examine the incidence of violence committed by or against juveniles in urban and rural areas of the United States. In FY 1994, OJJDP initiated this program by supporting studies of homicides by and of youth in Milwaukee, Wisconsin and a cross-site study in rural areas in South Carolina, Georgia, and Florida. The grantees are the University of Wisconsin and the University of South Carolina. In FY 1995, OJJDP provided funding for the second year of these studies and initiated two new violence studies in Los Angeles, California, and Washington, D.C. The grantees are the University of Southern California and the Institute for Law and Justice.

These four studies will provide valuable information regarding community violence patterns, with a particular focus on homicide and firearm use involving juveniles. They will also improve the juvenile justice system by identifying strategic law enforcement responses to juvenile violence and by identifying diversion, prevention, and control programs that ameliorate juvenile violence.

During FY 1996, the University of Wisconsin and the University of South Carolina will analyze their data and issue their findings with prior year funds. The University of Southern California will receive FY 1996 funds to identify violence prevention programs and conduct a household survey and interview adolescents and their care givers in Los Angeles County. The Institute for Law and Justice will receive FY 1996 funds to collect and analyze aggregate data from various juvenile justice providers and from a series of interviews with agency staff serving adjudicated juveniles. This will be followed by analysis and the preparation of a comprehensive report.

The program will be continued by the current project grantees. No additional applications will be solicited in FY 1996.

Hate Crimes

In FY 1993, OJJDP competitively awarded a grant to Education

Development Center, Inc. (EDC), to assess existing curriculum materials and develop a multi-purpose curriculum for use in educational and institutional settings. In FYs 1994 and 1995, EDC developed a multi-purpose curriculum for hate crime prevention in school and other classroom settings and the curriculum was pilot tested in the eighth grade of the Collins Middle School in Salem, Massachusetts. Information received in the pilot test was evaluated and the curriculum redesigned. EDC then tested the curriculum in additional sites in New York and Florida to ensure that it was geographically and demographically representative. In consultation with the Office for Victims of Crime, EDC also developed a dissemination strategy for the curriculum and other products, including a judge's guide on sanctions for juveniles who commit hate crimes.

In FY 1996, EDC will identify school districts and juvenile justice agencies across the country who are interested in receiving training in the curriculum. EDC will also provide training to education and juvenile justice personnel in order to foster adoption of the curriculum. The project will be implemented by the current grantee, EDC. No additional applications will be solicited in FY 1996.

Strengthening the Juvenile Justice System

Development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

The National Council on Crime and Delinquency, in collaboration with Developmental Research and Programs, Inc., has completed Phase I and II of a collaborative effort to support development and implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Phase I involved assessing existing and previously researched programs in order to identify effective and promising programs that can be used in implementing the Comprehensive Strategy. In Phase II, a series of reports were combined into a Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. Phase II also included convening of a forum, ''Guaranteeing Safe Passage: A National Forum on Youth Violence,'' and holding two regional training seminars for key leaders on implementing the Comprehensive Strategy.

In FY 1996, Phase III of the project will be funded to provide: targeted dissemination of the Comprehensive Strategy at national conferences; intensive training for selected States to implement the Comprehensive Strategy in up to six local jurisdictions; individualized technical assistance for the five Serious, Violent, and Chronic Juvenile Offender Program sites and the six SafeFutures sites; technical assistance to a limited number of individual jurisdictions interested in implementing the Comprehensive Strategy; and continued development of Comprehensive Strategy implementation materials.

The program will be implemented by the current grantees, the National Council on Crime and Delinquency and Developmental Research and Programs, Inc., under third-year funding of this 3-year program. No additional applications will be solicited in FY 1996.

Serious, Violent, and Chronic Juvenile Offender Treatment Program

The Serious, Violent, and Chronic Juvenile Offender Treatment Program is designed to assist local jurisdictions in the development and implementation of a comprehensive strategy for the intervention, treatment, and rehabilitation of juvenile offenders. The program is an extension of an initial effort, funded by OJJDP in 1993, entitled ''Accountability-Based Community Intervention (ABC) Program.'' Under the ABC initiative, Pittsburgh, Pennsylvania and Washington, D.C. were competitively funded to plan and implement a comprehensive graduated sanctions strategy.

In FY 1994, under a competitive announcement, OJJDP awarded funds under the Serious, Violent, and Chronic Offender Treatment Program to three additional jurisdictions (Boston, Massachusetts; Richmond, Virginia; and Jefferson Parish, Louisiana) to develop and implement a graduated sanctions plan. The plan's basic elements include: (1) Assess the existing continuum of secure and nonsecure intervention, treatment, and rehabilitation services in each jurisdiction; (2) define the juvenile offender population; (3) develop and implement a program strategy; (4) develop and implement an evaluation; (5) integrate private nonprofit, community-based organizations into the provision of offender services; (6) incorporate an aftercare program as an integral component of all residential placements; (7) develop a resource plan to enlist the financial and technical support of other Federal, State, and local agencies, private foundations, or other funding sources; and (8) develop a victim assistance component using local organizations.

In FY 1995, the ABC Program jurisdictions completed program funding and in FY 1996, each of the three FY 1994 grantees will receive awards to continue implementation activities. No additional applications will be solicited in FY 1996.

Community Assessment Centers

In FY 1996, OJJDP will identify jurisdictions that have developed assessment programs for juveniles and established linkages to integrated service delivery systems through the use of assessment centers. The concept of community assessment centers, reflecting the use of community input in a center's development and operations, offers many advantages, including comprehensive needs assessments of at-risk, dependent, or delinquent youth; improved access to integrated services; the promotion of alternatives to incarceration; and an enhanced ability to monitor racial and gender disparities in juvenile justice processing through automated information systems. OJJDP will examine current efforts across the Nation in order to identify replicable components or models that meet, or could be adapted to meet, the following goals:

- Ensuring positive outcomes for youth through the provision of comprehensive, community-based assessments that result in the development of an integrated treatment plan while avoiding unnecessary detention.
- Promoting and increasing the use of alternatives to detention and a system of graduated sanctions for delinquent offenders.
- Providing for more accurate and timely monitoring of the processing of at-risk, dependent, or delinquent juveniles to ensure fair and equitable treatment and outcomes in all phases of the juvenile justice system.
- Enhancing access to data or records across disciplines and integrating assessment, case management, and community-based services through the use of automated information systems, consistent with the principles of confidentiality.

If it is determined through this initial survey that a replicable model exists or can be developed, OJJDP will issue a competitive solicitation, late in FY 1996, for the replication or development of the model, including an evaluation component.

Juvenile Restitution: A Balanced Approach

OJJDP will continue support of the juvenile restitution training and technical assistance program in FY

1996. The project design is based on practitioner recommendations regarding program needs and on how best to integrate and institutionalize restitution and community service as key components of juvenile justice dispositions. In 1992, a working group was convened to help map out a plan for optimum development of the components of restitution programs. Plan components include community service, victim reparation, victim-offender mediation, offender employment and supervision, employment development, and other program elements designed to establish restitution as an important element to improving the juvenile justice system. This project is guided by balanced and restorative justice principles, which include the need to provide a balance of community protection, offender competency development, and accountability in programs for sanctioning and controlling juvenile offenders.

In FY 1995, the project assisted three local jurisdictions to implement the ''balanced approach,'' participated in presenting regional ''round tables'' for States interested in adopting the balanced and restorative justice model, and provided ad hoc technical assistance. In FY 1996 the project will continue this work and also develop guideline materials on the balanced and restorative justice program.

This project will be implemented by the current grantee, Florida Atlantic University. No additional applications will be solicited in FY 1996.

Training and Technical Assistance Program to Promote Gender-Specific Programming for Female Juvenile Offenders

The 1992 Amendments to the JJDP Act, Public Law 102–586, 106 Stat. 4982, addressed for the first time the issue of gender specific services. The Amendments required States participating in OJJDP's State Formula Grants Program to conduct an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of services available, the need for such services, and a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency.

In FY 1995, the OJJDP Gender Specific Services Program effort focused on providing training and technical assistance directly to States and on providing and promoting the establishment of State level gender-specific programs. Training and technical assistance have been provided to a broad spectrum of policymakers and service providers regarding services for juvenile female offenders.

In addition, OJJDP, in conjunction with the American Correctional Association (ACA), sponsored a National Juvenile Female Offender Conference. The purpose of the Conference was to provide juvenile corrections agency staff with an increased awareness of the unique problems and rehabilitative needs of female offenders and improve skills in working effectively with these offenders. Innovative juvenile female corrections programs were presented, including new approaches and strategies for operating facility-based programs for female offenders.

OJJDP also awarded discretionary grants to implement programs for female juvenile offenders and at-risk girls. Under the competitive Program to Promote Alternative Programs for Juvenile Female Offenders, OJJDP funded programs in Washington, D.C. and Chicago, Illinois. In addition, OJJDP has funded expansion of the Practical and Cultural Education Center for Girls, Inc. (P.A.C.E.) Program in Miami, Florida. Also, in order to provide the field with information regarding existent projects and current research, OJJDP funded Girls, Incorporated to conduct a national gender-specific services forum, which will be held during FY 1996. Finally, OJJDP's six SafeFutures Program sites will implement components designed to establish services for at-risk and delinquent girls.

In FY 1996, OJJDP will award a competitive grant to support a training and technical assistance program designed to build upon the work of these multiple efforts. It will transfer lessons learned, stimulate formulation of State and local policies based upon research findings and statistical trend data, and assist community-based youth serving agencies and juvenile detention and correctional programs to initiate, refine, and expand gender-specific programming that utilizes the strengths and capabilities unique to females.

In FY 1996, one two-year project period award will be made based upon a competitive solicitation.

Technical Assistance to Native American Programs

Native American programs for juveniles are facing increasing pressures because of the increasing numbers of youth who are involved in drug abuse, gang activity, and delinquency. Many reservations are experiencing the problems that plague communities nationwide: gang activity; violent crime; use of weapons; and increasing drug and alcohol abuse.

From FYs 1992 to 1995, OJJDP funded four Native American sites to support the development of programs to impact these problems. These sites are Gila River, Pueblo Jemez, the Navajo Nation, and the Red Lake Band of Chippewas. Each of these sites has been implementing programs specifically designed to meet the needs of the tribe. In Gila River an alternative school has been developed and implemented. The Navajo Nation has expanded the Peace Maker program to accommodate additional delinquent offenders and this approach has been adapted to the Red Lake and Pueblo Jemez communities. Additional programming, such as job skills development, has also been developed in some of the sites to meet the needs of their youth.

Although these programs have been successful, there is a need at these sites to expand programming options such as gang prevention and intervention programs. Other Native American Tribes have similar problems and needs, as do programs for Native Americans in many major metropolitan areas.

OJJDP will fund a national technical assistance program to support the development of additional programming for the four sites that OJJDP currently funds and to extend programming support to Tribes and urban tribal programs across the country. OJJDP will fund a technical assistance provider to provide direct technical assistance and to coordinate the delivery of technical assistance by other experts. This will be a three-year technical assistance program.

National Indicators of Juvenile Violent and Delinquent Behavior and Related Risk Factors

The difficulty of using juvenile arrests as a reliable measure of the level and nature of juvenile crime is well known. While juvenile arrest statistics have been useful as a barometer of juvenile involvement in crime, there are many critical dimensions in measuring this phenomenon that cannot be captured by any method other than direct measures of self-reported delinquency. The Department of Labor's Bureau of Labor Statistics is launching a 12,000-subject survey of 12—17-year-old juveniles that provides an opportunity to supplement the data collection by asking relevant questions about delinquency, guns, and violence. This longitudinal survey also provides an unprecedented opportunity to determine the generalizability of the findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency across a broad range of

juvenile populations. A transfer of funds will be made to the Department of Labor.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention and Suppression Program

The University of Chicago, School of Social Services Administration, received a competitive cooperative agreement award in FY 1994. This four-year project period award supports an evaluation of OJJDP's Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program. The evaluation will assist the five program sites in establishing realistic and measurable objectives, to document program implementation, and to measure the impact of a variety of gang program strategies. It will also provide interim feedback to the program implementors. The five sites are Bloomington, Illinois; Mesa, Arizona; Tucson, Arizona; Riverside, California; and San Antonio, Texas.

In FY 1996, the grantee will: design and implement organizational surveys and youth interviews; develop and implement program tracking and worker questionnaires and interviews; gather and track aggregate level offense/offender client data from police, prosecutor, probation, school, and social service program sources; develop and implement uniform individual level criminal justice data collection efforts; consult with local evaluators on development and implementation of local site parent/community resident surveys; and coordinate ongoing efforts with local researchers conducting special surveys of gang youth in the program.

This project will be continued by the current grantee, the University of Chicago, School of Social Services Administration. No additional applications will be solicited in FY 1996.

Evaluation of Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

The National Council on Crime and Delinquency (NCCD) received a 3-year competitive FY 1994 grant to conduct a process evaluation and design an impact evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance Program at sites in Colorado, New Jersey, Nevada, and Virginia. NCCD's initial award funded the design and implementation of the process evaluation, the design of an impact evaluation, and start-up data collection. A report on the process evaluation will be submitted in the spring of 1996. Fiscal Year 1996 funding will enable NCCD to begin the impact evaluation. Because of the excellent progress made during the first two years on the process evaluation, OJJDP will extend this program for three additional years to allow sufficient time for completion of an impact evaluation.

The project will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1996.

Juvenile Mentoring Program (JUMP) Evaluation

The Juvenile Mentoring Program (JUMP) was funded at 41 sites by OJJDP in FY 1995. In compliance with Part G, Section 288H of the JJDP Act, all JUMP sites are participating in a national evaluation designed to determine the success and effectiveness of JUMP in reducing delinquency and gang participation, improving academic performance, and reducing the dropout rate. Each program participant has been provided with a JUMP Evaluation Workbook containing data collection instruments and instructions on their use. It provides for the collection of data on delinquency, school performance, family functioning, and project operations. Grantees are responsible for collecting and analyzing site data and preparing periodic evaluation reports for OJJDP.

The evaluation grantee will be expected to: assist the sites in implementing the JUMP Evaluation Workbook; provide other evaluation technical assistance to the funded sites; and complete a cross-site evaluation of results from the 41 sites at the end of the JUMP program grants. A draft report to Congress will be prepared based on the cross-site evaluation.

One two-year cooperative agreement will be competitively awarded to carry out this program.

Juvenile Transfers to Criminal Court Studies

States are increasingly enacting juvenile code revisions broadening judicial waiver authority, providing prosecutor direct file authority, and mandating transfer of older, more violent juveniles to criminal court. Many States are also developing innovative procedures, such as blending traditional features of juvenile and criminal justice sentencing practices, through statutes that categorize juvenile offenders into different classes according to the seriousness of the offense, designating juvenile or criminal court for each class, or providing judges with discretion to make these judgments at sentencing. Studies of the impact of criminal court prosecution of juveniles have yielded mixed conclusions. Solid research on the intended and unintended consequences of transfer of juveniles to criminal court will enable policy makers and legislatures to develop statutory provisions and policies and improve judicial and prosecutorial waiver and transfer decisions.

To address this shortage of research programs, OJJDP competitively funded two juvenile waiver and transfer research projects in FY 1995. The first, awarded to the National Center for Juvenile Justice, compares juvenile and criminal court handling of juveniles in four States that authorize judicial waiver of serious and violent juvenile offenders and mandate criminal court handling for specified categories of juvenile offenders. The second study, awarded to the Florida Juvenile Justice Advisory Board, evaluates Florida's system of blending the option of criminal and juvenile justice system sentencing to handle serious or violent juvenile offenders. Additional funding is planned in FY 1996 to enable the projects to collect case specific information on sentence completion and recidivism data to provide a more definitive assessment of the impact of criminal versus juvenile justice system handling of serious and violent offender cases.

The projects will be implemented by the current grantees, the National Center for Juvenile Justice and the Florida Juvenile Justice Advisory Board. No additional applications will be solicited in FY 1996.

Technical Assistance to Juvenile Courts*

The National Center for Juvenile Justice (NCJJ), the research division of the National Council of Juvenile and Family Court Judges, provides technical assistance under this grant for juvenile court practitioners. The focus of the technical assistance is on court administration and management, program development, and special legal issues. During FY 1995, NCJJ responded to over 830 requests for technical assistance.

In FY 1996, special emphasis will be placed on appropriate sanctions for handling serious, violent, and chronic juvenile offenders and other emerging issues confronting the juvenile court, such as the increased use of waivers and transfers. The program will be implemented by the current grantee, NCJJ. No additional applications will be solicited in FY 1996.

Juvenile Court Judges Training*

The primary focus of this project in FY 1996 will be to continue and refine the training and technical assistance program offered by the National Council of Juvenile and Family Court Judges. The objectives of the training are to supplement law school curriculums by providing basic training to new juvenile court judges and to and provide experienced judges with state-of-the-art training on developments in juvenile and family case law and effective dispositional options. Emphasis is also placed on alcohol and substance abuse, child abuse and neglect, gangs and violence, disproportionate incarceration of minority youth, and intermediate sanctions. Training is also provided to other court personnel, including juvenile probation officers, aftercare workers, and child protection and community treatment providers. In FY 1995, over 13,000 judges and court personnel received training through some 80 different programs. In addition, over 800 training related technical assistance requests were completed.

The project will be implemented by the current grantee, the National Council of Juvenile and Family Court Judges. No additional applications will be solicited in FY 1996.

The Juvenile Justice Prosecution Unit

OJJDP has historically supported prosecutor training activities through the National District Attorneys' Association (NDAA). To continue that work, OJJDP awarded a 3-year project period grant in FY 1995 to the American Prosecutor Research Institute (APRI) which is the research and technical affiliate of NDAA, to establish a Juvenile Justice Prosecution Unit (JJPU). The JJPU implements workshops on juvenile justice related policy, leadership, and management for chief prosecutors and unit chiefs; provides background information to prosecutors on juvenile justice issues and programs; provides training; and provides technical assistance to prosecutors.

The project is based on planning and input by prosecutors familiar with juvenile justice needs. The project draws on the expertise of working groups of elected or appointed prosecutors and juvenile unit chiefs to support project staff in providing technical assistance, juvenile justice-related research and program information to practitioners nationwide, and training. Start up activities focused on the collection of information through a questionnaire that was sent to every prosecutors' office regarding juvenile programs. APRI also sponsored a National Invitational Symposium on Juvenile Justice which provided a forum for prosecutors to exchange ideas, programs, issues, legislation, and practices in juvenile justice. APRI will conduct three workshops for elected and appointed prosecutors and juvenile unit chiefs to help improve prosecutor involvement in the prosecution and prevention of juvenile delinquency.

The project will be implemented by the current grantee, APRI. No additional applications will be solicited in FY 1996.

Due Process Advocacy Program Development

In FY 1993, OJJDP funded the American Bar Association (ABA), in partnership with the Juvenile Law Center (JLC) of Philadelphia, Pennsylvania, and the Youth Law Center (YLC) of San Francisco, California, to develop strategies to improve due process and the quality of legal representation. The goals of the program are to increase juvenile offenders' access to legal services and to improve the quality of preadjudication, adjudication, and dispositional advocacy for juvenile offenders. The strategies developed will be made available to State and local bar associations and other relevant organizations so that they can develop approaches to increase the availability and quality of counsel for juveniles.

In FYs 1994 and 1995, the ABA, JLC, and YLC conducted an assessment of the current state of the art with regard to legal services, training, and education. This survey included a review of literature, case law, State statutes, and a survey of public defenders, court appointed lawyers, law school clinical programs, and judges. A report, entitled ''A Call for Justice, An assessment of the Access to Counsel and Quality of Representation in Delinquency Proceedings'' was developed and published by the ABA. It has been widely distributed to State and local bar associations, Chairs of State Juvenile Justice Advisory Committees, participants in the ABA survey, the National Association of Child Advocates, and others.

In FY 1996, training is scheduled to begin with the first training being provided to the States of Tennessee, Maryland, and Virginia. The structure and scope of the training will be tailored to fit the needs of each site. A training manual, under development, will cover training on key issues such as detention, transfer or waiver, and dispositions. It is designed to fill gaps in existing training programs. The ABA and its partners will also establish networks with public defenders offices, children's law centers, and others through the HANDSNET system and mailings that provide program updates.

This program will be implemented by the current grantee, ABA. No additional applications will be solicited in FY 1996.

Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

This initiative is designed to support implementation, training and technical assistance, and evaluation of an intensive community-based aftercare model in four jurisdictions that were competitively selected to participate in this demonstration program. The overall goal of this intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model can be viewed as having three distinct, yet overlapping segments: (1) pre-release and preparatory planning activities during incarceration; (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry; and (3) long-term reintegrative activities to insure adequate service delivery and the required level of social control.

In FY 1994, The Johns Hopkins University received a grant to test an intensive community-based aftercare model in four demonstration sites: Denver (Metro), Colorado; Clark County (Las Vegas), Nevada; Camden and Newark, New Jersey; and Norfolk, Virginia. Each of the four sites received additional funds to support program implementation in FY 1995. The Johns Hopkins University contracts with California State University at Sacramento to assist in the implementation process by providing training and technical assistance and by making funds available through contracts to each of the four demonstration sites. Each of the sites have developed risk assessment instruments for use in selecting specific youth who need this type of intensive aftercare intervention, hired and trained staff in the intensive aftercare model, identified existing and needed community support (intervention) services, and identified data necessary for an accurate evaluation of the intensive community-based aftercare program. In addition, each of the sites has begun random assignment of clients to the program. The Johns Hopkins University and its sub-contractor, California State University at

Sacramento, have provided continuous training and technical assistance to both administrators/managers and line staff in the intensive community-based aftercare sites. Staff have been trained in the theoretical underpinnings of the IAP model as well as in the practical applications of the model, such as techniques for identifying juveniles appropriate for the program. Training and technical assistance in this model have also been available to other States and OJJDP grantees on a limited basis.

In FY 1996, the sites will continue to implement and test the aftercare model. An independent evaluation contractor is performing a process evaluation and has designed an impact evaluation to be implemented under a separate grant.

The Johns Hopkins University will provide continuing training and technical assistance to the four selected sites and will initiate aftercare technical assistance services to jurisdictions participating in the OJJDP/Department of the Interior Youth Environmental Services (YES) Program and to OJJDP's six SafeFutures Program sites. This funding supports the third budget period of a 3-year project period.

This project will be implemented by the current grantee, The Johns Hopkins University. No additional applications will be solicited in FY 1996.

Training and Technical Assistance for National Innovations to Reduce Disproportionate Minority Confinement (The Deborah Wysinger Memorial Program)

National data and studies have shown that minority children are over represented in juvenile and criminal justice facilities across the country. Accordingly, Congress, in the 1988 reauthorization of the JJDP Act, amended the Formula Grants Program State plan requirements to include addressing disproportionate confinement of minority juveniles. This is accomplished by gathering data, analyzing it to determine the extent to which minority juveniles are disproportionately confined, and designing strategies to address this issue. A Special Emphasis discretionary grant program was developed to demonstrate model approaches to addressing disproportionate minority confinement (DMC) in five State pilot sites (Arizona, Florida, Iowa, North Carolina, and Oregon). Funds were also awarded to a national contractor to provide technical assistance to assist both the pilot sites and other States, to evaluate their efforts, and share relevant information.

In FYs 1994 and 1995, OJJDP made additional Special Emphasis discretionary funds available to non-pilot States that had completed data gathering and assessment in order to provide initial funding for innovative projects designed to address DMC.

These efforts to impact DMC have yielded an important lesson: that systemic, broad-based interventions are necessary to reduce DMC. OJJDP recognizes the need to foster the development and documentation of effective strategies using training, technical assistance, information dissemination, provision of practical and targeted resource tools, and public education. In order to further these strategies, OJJDP proposes to competitively solicit innovative proposals to implement a 3-year national training, technical assistance, and information dissemination initiative focused on the disproportionate confinement of minority youth. The selected grantee will: (1) review and synthesize current State and local practices and policies designed to reduce DMC; (2) develop and deliver training to juvenile justice specialists, SAG Chairs, and selected grantees to inform them of DMC requirements, best practices and issues; (3) assist key OJJDP grantees to incorporate DMC issues, practices and policies into their training and education programs (key grantees are those training and technical assistance providers working with police, the courts and juvenile detention staff, SafeFutures sites, Title V, and some State Challenge Program grant recipients); (4) assist the eight current DMC grantees to manage and institutionalize their programs; (5) support the Formula Grants Program technical assistance contractor and OJJDP staff in reviewing State DMC plans; and (6) develop and carry out a national dissemination and public education program on DMC and help States and localities develop similar local education programs.

The selected DMC grantee will coordinate with OJJDP's National Training and Technical Assistance Center and other OJJDP contractors to identify OJJDP program areas where DMC policies and practices can be integrated into ongoing program activities. The DMC grantee and the National Training and Technical Assistance Center will also collaborate in the development of toolkits and resource products—screening tools, assessment, and training components—to be used by jurisdictions at each stage of their DMC data gathering, assessment and program response cycle. Other resource products will include educational curricula, technical assistance protocols for working with courts, police, intake services, probation and prosecutor's offices, assessment and screening tools, and planning and analysis tools for juvenile justice specialists.

OJJDP will competitively award a single grant to implement a 3-year national training, technical assistance, and information dissemination initiative focused on the disproportionate confinement of minority youth.

Juvenile Probation Survey Research

Juvenile probation is one of the most critical areas of the juvenile justice system. However, there is presently very little information available on juveniles on probation. We do not know how many juveniles are on probation, their demographic characteristics, their offenses, or the conditions of their probation, including length, residential confinement, electronic monitoring, restitution, etc. This project will conduct survey research and develop a questionnaire to collect this important information. As States operate their juvenile probation systems in very different manners, this project will also examine how these differences affect the information collected.

OJJDP plans to undertake a 2-year project to complete this research through an interagency agreement with the Bureau of the Census.

Improvements in Correctional Education for Juvenile Offenders

The Improvements in Correctional Education for Juvenile Offenders Program, a program development and demonstration initiative, was awarded to the National Organization for Social Responsibility (NOSR) in FY 1992. It is being implemented in three phases: identification, assessment, and testing and dissemination. The purpose of the Program is to assist juvenile corrections administrators in planning and implementing improved educational services for detained and incarcerated juvenile offenders.

During the 3-year project period, the grantee implemented the first two phases of the program. An extensive literature search of effective education practices was undertaken and a report on effective practices in juvenile corrections education was published and a training and technical assistance manual were published. In addition, three State juvenile corrections facilities were selected as model sites for testing effective educational practices. The sites are: Adobe Mountain School, Arizona; Lookout Mountain Youth Center, Colorado; and Sauk Centre, Minnesota.

In FY 1995, NOSR received funding to implement Phase III, testing and

dissemination. The three model test sites are receiving site specific technical assistance in the assessment of their educational programs and in the development and implementation of effective educational practices, including reintegration of appropriate juveniles back into the mainstream education system.

Fiscal Year 1996 funds will be used to assist each site to enhance its curriculum and implementation strategy to better address the needs of the juveniles they serve.

The project will be implemented by the current grantee, NOSR. No additional applications will be solicited in FY 1996.

Performance-Based Standards for Juvenile Detention and Correctional Facilities

There is a need to increase the accountability of detention and correctional agencies, facilities, and staff in performing their basic functions. The development of performance-based standards has emerged as a primary strategy for improving conditions of confinement. This program supports the development and implementation of performance-based standards for juvenile detention and corrections. The performance measures and standards being developed will address both services and the quality of life for confined juveniles. They will reflect the consensus of a broadly representative group of national organizations on the mission, goals, and objectives of juvenile detention and corrections. OJJDP plans to promote nationwide adoption and implementation of the measures and standards through a future training and technical assistance program.

In FY 1995, OJJDP awarded a competitive 18-month cooperative agreement to the Council of Juvenile Corrections Administrators (CJCA) to develop national performance-based standards for juvenile detention and correctional facilities. A National Consortium of major professional and advocacy organizations is providing technical advice and support in all aspects of the development and implementation of the standards. The project will focus on standards in the areas of: safety; security; order; programming/treatment/education; health; and justice.

During FY 1996, the working groups will complete the drafting of performance criteria and measures, as well as assessment tools for monitoring performance in all substantive areas. In addition, all materials will be field tested and revised as needed. A plan for implementation will also be submitted.

By 1997, initial performance standards and a measurement system will be developed along with specific plans for an 18-month period of intensive demonstration and testing of the performance-based standards and their impact on juvenile corrections and detention programming.

The program will be implemented by the current grantee, CJCA. No additional applications will be solicited in FY 1996.

Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)

The primary purpose of the Technical Assistance to Juvenile Corrections and Detention project is to provide specialized technical assistance to juvenile corrections, detention, and community residential service providers. The grantee, the American Correctional Association (ACA), also plans and convenes an annual Juvenile Corrections and Detention Forum. The Forum provides an opportunity for juvenile corrections and detention leaders to meet and discuss issues, problems, and solutions to emerging corrections and detention problems. The ACA also provides workshops and conferences on current and emerging national issues in the field of juvenile corrections and detention and offers technical assistance through document dissemination. OJJDP awarded a FY 1995 competitive grant to ACA to provide these services over a three-year project period. The project will be implemented by the current grantee, ACA. No additional applications will be solicited in FY 1996.

Training for Juvenile Corrections and Detention Staff

In FY 1996, OJJDP will continue to support the development and implementation of a comprehensive training program for juvenile corrections and detention management staff through an interagency agreement with the National Institute of Corrections (NIC). The program is designed to offer a core curriculum for juvenile corrections and detention administrators and mid-level management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, the role of the victim in juvenile corrections, juvenile programming for specialized needs of offenders, and managing the violent or disruptive offender. The training is conducted at the NIC Academy and regionally. This program is a continuation activity, initiated in FY 1991 under an interagency agreement with NIC that was renewed in FY 1994. No additional applications will be solicited in FY 1996.

Training for Line Staff in Juvenile Detention and Corrections

In FY 1994, the National Juvenile Detention Association (NJDA) was awarded a competitive three-year project period grant to establish a training program to meet the needs of the more than 38,000 line staff of juvenile detention and corrections facilities. In the first year under the grant, NJDA revised and updated a 40-hour Detention Careworker curriculum, developed a 24-hour Train-the-Trainer for the Detention Careworker curriculum, conducted 16 separate trainings and developed new lesson plans in 7 substantive areas, conducted a national training needs assessment for juvenile corrections careworkers, and provided technical assistance to 37 agencies and training to 887 line staff.

In FY 1996, NJDA will continue to offer training to practitioners, develop new curriculums around emerging issues, and complete the development and testing of a 40-hour basic careworker curriculum for juvenile corrections line staff. Additionally, NJDA will deliver selected training programs for juvenile detention and corrections line staff on a number of topical issues.

This project will be implemented by the current grantee, NJDA. No additional applications will be solicited in FY 1996.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

The Conditions of Confinement: Juvenile Detention and Correctional Facilities Research Report (1994), completed by Abt Associates under an OJJDP grant, identified overcrowding as the most urgent problem facing juvenile corrections and detention facilities. Overcrowding in juvenile facilities is a function of decisions and policies made at the State, county, and city levels. The trend in a number of jurisdictions toward an increased use of detention and commitment to State facilities has been reversed when key decision makers, such as the chief judge, chief of police, director of the local detention facility, head of the State juvenile correctional agency, and others who affect the flow of juveniles through the system, agree to make decisions collaboratively and to modify practices and policies. In some instances modification has occurred in response

to court orders. Compliance with court orders is improved with the support of enhanced interagency communication and planning among those agencies affecting the flow of juveniles through the system.

In addressing the problems of overcrowded facilities, OJJDP considered the recommendations of the Conditions of Confinement study regarding overcrowding, the data on over representation of minority youth in confinement, and other information that suggests crowding in juvenile facilities must be reduced. Policy makers can do this by increasing capacity, where necessary, or by taking other steps to control crowding. This project, competitively awarded to the National Juvenile Detention Association (NJDA) in FY 1994 for a three-year project period, provides training and technical assistance materials for use by State and local jurisdictional teams. In FY 1995, the project collected information on strategies that are used or could be used to control crowding, and prepared training and technical assistance materials. Based on the demonstrated need for assistance and related criteria, NJDA will select three jurisdictions in FY 1996 for onsite development, implementation, and testing of crowding reduction procedures, and will provide regional training on these procedures to other jurisdictions.

A FY 1996 continuation award will be made to the current grantee, the National Juvenile Detention Association. No additional applications will be solicited in FY 1996.

National Program Directory

In FY 1995, OJJDP initiated the development of a National Program Directory, a national list of all juvenile justice offices, facilities, and programs in the United States, through the Bureau of the Census. The Census Bureau developed a directory format for juvenile detention and correctional facilities, which would contain the addresses and phone numbers of localities, names and titles of directors, and important classification information, classify facilities by the agency or firm that operates them, and list the functions of the facility. This structure was developed specifically to provide OJJDP with the ability to conduct surveys and censuses of juvenile custody facilities. The effort placed into developing this structure would also translate to other areas, such as a list of juvenile probation offices.

Beyond developing the computer structure, this project will develop, in FY 1996, the actual sampling frame or address list. The development of complete frames for any segment of the juvenile justice system requires many different approaches. The Census Bureau will use contacts with professional organizations to compile a preliminary list of juvenile facilities, courts, probation offices, and programs. The Census Bureau will then seek contacts in each State for further clarification of the lists, following up until a complete list of all programs of interest has been compiled. This program will be funded through an interagency agreement with the Census Bureau. No additional applications will be solicited in FY 1996.

Delinquency Prevention and Intervention

Training in Risk-Focused Prevention Strategies

OJJDP will provide additional training in FY 1996 to communities interested in developing a risk-focused delinquency prevention strategy. This training supports OJJDP's Title V Delinquency Prevention Incentive Grants Program, codified at 42 U.S.C. § 5781–5785, by providing the knowledge and skills necessary for State, local, and private agency officials and citizens to identify and address risk factors that lead to violent and delinquent behavior in children. In FYs 1994 and 1995, this training was offered to all States, territories, and the District of Columbia that received discretionary grants from OJJDP to implement the Title V Program.

OJJDP awarded a new contract with FY 1995 funds to perform ongoing tasks and provide prevention training in the following areas: (1) orientation on risk and resiliency-focused prevention theories and strategies for local community leaders; (2) the identification, assessment and addressing of risk factors; (3) —training of trainers— in selected States to provide a statewide capacity to train communities in risk-focused prevention; and (4) development of training curriculums and materials to increase the capacity of States and localities to conduct risk-focused prevention training. These services will be provided through second year funding of a competitive contract awarded to Developmental Research and Programs, Inc. No additional applications will be solicited in FY 1996.

Youth-Centered Conflict Resolution

Increasing levels of juvenile violence have become a national concern. Violence in and around school campuses and conflict among juveniles both in schools and neighborhoods have become extremely problematic for school administrators, teachers, parents, community leaders, and the public. While experts may debate the merits and impact of the varied contributing factors, most would agree that school curriculums do not provide for the systematic teaching of problem- and conflict-resolving skills.

To address this issue, OJJDP awarded a competitive grant in FY 1995 to the Illinois Institute for Dispute Resolution to develop, in concert with other established conflict resolution organizations, a national strategy for broad-based education and training in the use of conflict resolution skills. In support of this task, the grantee is to conduct four regional conferences based on a joint publication being developed by the Departments of Justice and Education. The grantee will also provide technical assistance and disseminate information about conflict resolution programs. The project will be continued by the current grantee, the Illinois Institute for Dispute Resolution. No additional applications will be solicited in FY 1996.

Pathways to Success

This project is a collaborative effort among OJJDP, the Bureau of Justice Assistance (BJA), and the National Endowment for the Arts. The Pathways to Success Program promotes vocational skills, entrepreneurial initiatives, recreation, and arts education during afterschool, weekend, and summer hours by making a variety of opportunities available to at-risk youth.

Through a competitive process, five sites were funded in FY 1995, the first year of a 2-year project period. The selected programs are located in: Newport County, Rhode Island; New York, New York; Anchorage, Alaska; Washington, D.C.; and Miami, Florida.

The SOS Playbacks: Arts-Based Delinquency Based Juvenile Delinquency Prevention Program, located in Newport County, Rhode Island, provides an afterschool arts program for students aged 13–18 from local public housing developments. Students in the program participate in peer-to-peer support and education through the mediums of visual arts, dance, and drama.

Project CLEAR, located in New York City, provides extended day programs to students in two elementary schools that have a high percentage of students who live in low-income areas and have limited English proficiency. Services include academic tutoring, arts in education instruction, physical recreation, and group counseling services. Two hundred students in

grades 1–6 are served annually. Saturday programs for targeted youth and their families and evening programs for parents are also provided.

The Anchorage School District and the out-North Theater in Anchorage, Alaska have collaborated to provide afterschool and summer theater programs for students aged 12–14 from low income areas in Anchorage. Students involved in this program will produce and perform in plays they have written that reflect their personal life experiences.

The District of Columbia Courts Elementary Baseball Program provides combined recreational activities, tutoring activities, one-to-one mentoring, and parent workshops for students aged 6–10 who are enrolled in Garrett Elementary School in Washington, D.C. This school is located in one of the highest crime areas in Washington, D.C. The central activity of this program is interleague baseball games. Team participation is contingent upon student participation in tutoring and other activities.

The Aspira ''Youth Sanctuary'' Program, located in Dade County, Florida, addresses delinquency and other behavioral problems of Latino youth aged 10–16 who reside in migrant camps. This program teaches art, including community mural projects, folklore dance incorporating Latino dancing, and provides recreation opportunities for targeted students afterschool, on weekends, and during the summer months. Parent training workshops and parent support are key activities in this program.

This Program will be implemented in FY 1996 by the current project grantees. No additional applications will be solicited in FY 1996.

Teens, Crime, and the Community: Teens in Action in the 90s*

This continuation program is conducted by the National Crime Prevention Council (NCPC) in partnership with the National Institute for Citizen Education in the Law (NICEL). Teens in Action in the 90s is a special application of the Teens, Crime, and Community (TCC) program that operates on the premise that teens, who are disproportionately the victims of crimes, can contribute to improving their schools and communities through a broad array of activities.

During FY 1995, the TCC Program expanded to more than 100 new sites, primarily through five regional expansion centers located in New England, the Mid-Atlantic States, the Mid-South, the Deep South, and the Pacific Northwest Coast. These TCC projects utilized Boys and Girls Clubs of America and their affiliates in six localities to become partners in TCC efforts in these cities.

More than 4,000 teachers, social service providers, juvenile justice professionals, law enforcement officers, and other community leaders participated in intensive training to help sites implement the TCC curriculum in their communities. Over 1,000 individuals benefited from technical assistance, materials, and consultation regarding TCC in areas of program implementation, fund development, and networking opportunities.

In FY 1996, NCPC and NICEL will implement the National Teens, Crime, and the Community Program in additional locations across the country. In addition, TCC will seek to implement projects in the six SafeFutures Program sites.

This program will be implemented by the current grantee, NCPC. No additional applications will be solicited in FY 1996.

Law-Related Education (LRE)

The national Law-Related Education (LRE) Program ''Youth for Justice'' includes five coordinated LRE projects and programs operating in 48 States and 4 non-State jurisdictions.

The program's purpose is to provide training and technical assistance to State and local school jurisdictions that will result in the institutionalization of quality LRE programs for at-risk juveniles. The focus of the program during FY 1996 will be to continue linking LRE to violence reduction and to involve program participants in finding solutions to juvenile violence. The major components of the program are coordination and management, training and technical assistance, assistance to local program sites, public information, and program development and assessment.

This program will be implemented by the current grantees, the American Bar Association, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, and the Phi Alpha Delta Legal Fraternity. No additional applications will be solicited in FY 1996.

Cities in Schools' Federal Interagency Partnership

This program is a continuation of a national school dropout prevention model developed and implemented by Cities in Schools, Inc. The Cities in Schools (CIS) Program provides training and technical assistance to States and local communities, enabling them to adapt and implement the CIS model. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where CIS State organizations are established, they assume primary responsibility for local program replication during the Federal interagency partnership.

The Federal Interagency Partnership program is based on a program strategy that is designed to enhance CIS, Inc.'s capability to provide training and technical assistance, introduce selected initiatives to CIS youth at the local level, disseminate information, and network with Federal agencies on behalf of State and local CIS programs.

Fiscal year 1995 accomplishments include the following: establishment of 15 student-run entrepreneurship programs; establishment of a consulting program consisting of a pool of CIS State and local program directors and other experts to support the expanded technical assistance needs of the CIS network of State and local programs; production and distribution of two publications, a catalogue of program resources, and a history of the CIS program; a three-day training session featuring presentations from Federal agencies on the financial and programmatic resources available through their Departments; and a catalogue of State and local programs in the areas of family strengthening and parent participation, working with adjudicated or incarcerated youth, violence prevention, prevention of AIDS and sexually transmitted diseases, and conflict resolution.

The Cities in Schools Federal Interagency Partnership program is jointly funded by OJJDP and the Departments of Health and Human Services and Commerce under an OJJDP grant. The project will be implemented by the current grantee, Cities in Schools, Inc. No additional applications will be solicited in FY 1996.

Race Against Drugs

The Race Against Drugs (RAD) Program is a unique drug awareness, education, and prevention campaign designed to help young people understand the dangers of drugs and live a non-impaired lifestyle. With help and assistance from 23 motor sports organizations, the cooperation of the Federal Bureau of Investigation, the Drug Enforcement Administration, the U.S. Navy, and other government agencies, the National Child Safety Council, and a variety of corporate sponsors, RAD has become an exciting and innovative addition to drug abuse

prevention programs. RAD activities now include national drug awareness and prevention activities at schools, malls, and motor sport events; television and public service announcements, posters, and signage on T-shirts, hats, decals, etc.; and specialized programs like the ''Adopt-A-School Essay and Scholarship'' and ''Winner's Circle'' programs. Curriculum materials include the Be A Winner Action Book for 6–8th graders, a RAD Adult Guide, and a RAD coloring book for K–4th graders.

In FY 1995 the program was funded to develop additional and updated curriculum materials, reach additional program sites, and demonstrate the Winner's Circle Program in Seattle, Washington. It was funded jointly by the Bureau of Justice Assistance and OJJDP with the Center for Substance Abuse Prevention (CSAP) providing extensive printing and clearinghouse support.

In FY 1996, OJJDP will continue funding to assist RAD to expand program operations to reach 500,000 youth at 300 RAD events annually, conduct 20 adopt-a-school programs in conjunction with major racing events, develop mobile educational exhibits and a variety of new educational materials, and conduct a program evaluation. OJJDP anticipates that the program will operate with private direct funding and in-kind support at the end of the project period.

The program will be implemented by the current grantee, the National Child Safety Council. No additional applications will be solicited in FY 1996.

The Congress of National Black Churches: National Anti-Drug Abuse/ Violence Campaign (NADVC)

OJJDP will continue to fund the Congress of National Black Churches' (CNBC) national public awareness and mobilization strategy to address the problem of juvenile drug abuse and violence in targeted communities. The goal of the CNBC national strategy is to summon, focus, and coordinate the leadership of the black religious community, in cooperation with the Department of Justice and other Federal agencies and organizations, to mobilize groups of community residents to combat juvenile drug abuse and drug-related violence.

The campaign now operates in 37 city alliances, having grown from 5 original target cities. The smallest of these alliances consists of 6 churches and the largest has 135 churches. The NADVC program involves approximately 2,220 clergy and affects 1.5 million youth and the adults who influence their lives. NADVC also provides technical support to four statewide religious coalitions.

As a result of NADVC's technical assistance and training workshops, project sites have been able to leverage approximately $1.5 million in private and government funding.

NADVC has contributed to the planning and presentation of numerous technical assistance and training conferences on violence and substance abuse prevention and produced a National Training and Site Development Guide and a video to assist sites implementing the NADVC model.

The Program will be expanded in FY 1996 to address family violence intervention issues and target up to 6 additional cities, for a total of 43 cities. Consideration will be given to SafeFutures sites when selecting the new sites. This program will be implemented by the current grantee, CNBC. No additional applications will be solicited in FY 1996.

Community Anti-Drug-Abuse Technical Assistance Voucher Project

The National Center for Neighborhood Enterprise (NCNE) has extended its outreach to community-based grassroots organizations around the country that are working effectively to solve the problems of juvenile drug abuse. This project has three goals: (1) to allow various neighborhood groups to inexpensively purchase needed services through the use of technical assistance vouchers disbursed by NCNE; (2) to demonstrate the cost-effective use of vouchers to help neighborhood groups secure technical assistance for anti-drug-abuse projects to serve high-risk youth; and (3) to extend OJJDP funded technical assistance to groups that are often excluded because they lack the administrative sophistication, technical and grantsmanship skills, and resources to participate in traditional competitive grant programs.

The Technical Assistance Voucher Project builds upon the strengths and problem solving capacity existing in low-income communities nationwide and provides much needed technical and monetary resources to grassroots organizations that are operating youth anti-drug programs and activities for high risk youth.

The program awards 15–25 vouchers, ranging from $1,000 to $10,000 annually. Eligible organizations must have: proven effectiveness in serving a specific constituency; a small operating budget ($150,000 maximum); 501(c)(3) tax exempt status; and a program that targets high-risk youth and/or juvenile offenders; and leadership that is indigenous to the community. Vouchers can be used for planning, proposal writing, program promotion, legal assistance, financial management, and other activities. This project will be implemented by the current grantee, NCNE. No additional applications will be solicited in FY 1996.

Training and Technical Assistance for Family Strengthening Services

Prevention, early intervention, and effective crisis intervention are critical elements in a community's family support system. In many communities, one or more of these elements may be missing or programs may not be coordinated. In addition, technical assistance and training have not generally been available to community organizations and agencies providing family strengthening services. In response, OJJDP awarded a three-year competitive grant in FY 1995 to the University of Utah's Department of Health and Education to provide training and technical assistance to communities interested in establishing or enhancing a continuum of family-strengthening efforts, including parent training. Grant activities include a literature review, national search, rating, and selection of family strengthening models, development and implementation of a marketing and dissemination strategy, and the selection of sites to receive intensive technical assistance. The grantee will also convene two regional conferences, produce user and training-of-trainers guides, and distribute videos of several family-strengthening workshops.

This program will be implemented by the current grantee, the University of Utah's Department of Health and Education. No additional applications will be solicited in FY 1996.

Henry Ford Health System*

In FY 1995, the Henry Ford Health System (HFHS) initiated a two-year program in Detroit, Michigan called ''Reducing Youth Violence Through School-Based Initiatives.'' The program serves seven elementary schools and two middle schools that feed into a Detroit high school. Primary Program activities are to identify juveniles at high risk, assess the needs of target youth, identify resources available in the community to serve those needs, coordinate community resources to create comprehensive programs, and evaluate the efficacy of the program. Participants include teachers, family members, community programs and agencies, as well as student and health center staff. This project will be implemented by the current grantee,

HFHS. No additional applications will be solicited in FY 1996.

Jackie Robinson Center*

This three-year project, initially funded in FY 1994, supports expansion of the Brooklyn USA Athletic Association, Inc.'s Jackie Robinson Centers for Physical Culture (JRC), which provide a comprehensive youth development and delinquency and crime prevention program. Presently, there are 18 school and 3 replication sites in operation serving in-school youth between the ages of 8 and 18. JRC's services are designed to prevent New York City youth from becoming involved in street gangs, violence, or drug and alcohol abuse, and to alert, educate, and inform youth and their parents about these issues. Activities conducted by JRC include development of positive peer groups, youth leadership, social and personal skills training, academic tutoring, sports, cultural activities, rap and discussion groups, individual counseling, parent education and involvement, community events, on-site crisis intervention, referral to treatment, physical/medical examinations, social service referral, and college and job placement assistance. JRC has increased its recruitment and registration from 750 to 6,600 students. Students in each of the 18 sites participated in a minimum of 3 special events during the year.

In FY 1996, JRC will develop a data bank system to monitor the in-school progress of participating students through indicators such as attendance, academic, and behavioral records. This project will be implemented by the current grantee, the Brooklyn USA Athletic Association, Inc. No additional applications will be solicited in FY 1996.

Child Abuse and Neglect and Dependency Courts

A Community-Based Approach to Combating Child Victimization

Statistics on child abuse and neglect are alarming. In 1994 alone, an estimated 3.1 million abused or neglected children were reported to public welfare agencies. More than 1 million of these cases were substantiated. Each year, an estimated 2,000 children—most under 4 years old—die at the hands of parents or caretakers.

Research demonstrating a link between child victimization and later involvement in violent delinquency suggests the efficacy of preventing child abuse and neglect and treating the victims of abuse as a means of reducing later violent and delinquent behavior.

To break the cycle of childhood victimization and violent delinquency, OJJDP plans to enter into a joint solicitation with other bureaus of the Office of Justice Programs, in cooperation with other Federal agencies, to foster comprehensive, community-based, interagency and multi disciplinary approaches to the prevention, identification, intervention, and treatment of child abuse and neglect.

It is anticipated that two to five demonstration projects will be competitively awarded in FY 1996 as part of a 5-year project period. Sites will be required to address each of the following program areas: (1) data collection and evaluation; (2) system reform and accountability; (3) training and technical support to practitioners; (4) provision of a continuum of services to protect children and support families; and (5) prevention education and public information.

Training and technical assistance will be made available to selected sites in a number of areas, including system reform, practitioner training, victim advocacy, team-building and interagency collaboration, family-strengthening services assessment and implementation, and diversity/cultural awareness training.

Applicants will be expected to demonstrate an ability to leverage other available sources of funds and document a readiness to engage in reform of child protection systems, progress in assessing and addressing child abuse and neglect, and broad community representation, commitment, and participation.

Permanent Families for Abused and Neglected Children*

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose is to ensure that foster care is used only as a last resort and as a temporary solution. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is acknowledged by the appropriate disciplines. Project activities include national training programs for judges, social service personnel, citizen volunteers, and others under the Reasonable Efforts Provision of the Social Security Act, as amended, 42 U.S.C. § 671(a)(15), training in selected States, and implementation of a model guide for risk assessment.

The project is implemented by the National Council of Juvenile and Family Court Judges (NCJFCJ) . NCJFCJ provides support services to coordinate programs, trains judges in the Court Appointed Special Advocate (CASA) program, and implements the Model Court Program in additional jurisdictions.

In FY 1996, a new program to divert families from the court system through arbitration under court supervision will be developed in three model courts using other funding sources. However, the program will be incorporated into NCJFCJ's permanency planning training.

The Permanent Families for Abused and Neglected Children Program will be implemented by the current grantee, NCJFCJ. No additional applications will be solicited in FY 1996.

Parents Anonymous, Inc.*

Parents Anonymous, Inc. (PA) establishes groups and adjunct programs that respond to the needs of families through a mutual support model of parents and professionals sharing their expertise and their belief in each individual's ability to grow and change in ways that create caring and safe environments for themselves and their children. In FY 1994, OJJDP began supporting PA's Juvenile Justice Project to enhance PA's mission to prevent child abuse and neglect by developing a new capability within the PA network to address the needs of high-risk, inner-city populations, with an emphasis on minority parents.

As a result of OJJDP funding, PA has: developed 31 new groups in 11 states; produced and disseminated the booklet, I Am A Parents Anonymous Parent, in Spanish; convened a National Leadership Conference in Washington, D.C. in February 1995 which focused on outreach, recruitment and services for families of color and collaboration with juvenile justice agencies; convened an Executive Directors' Leadership Conference in Claremont, California, in November 1995; conducted written surveys, focus groups, and intensive telephone interviews to gather ''best practices'' data; produced and disseminated 12,000 copies of an expanded Innovations PA newsletter; and produced and disseminated 15,000 copies of The Parent Networker, a new semi-annual publication focused on issues of diversity.

In FY 1996, PA will convene at least two regional trainings focused on working with families of color in high-risk settings, produce and disseminate two technical assistance bulletins, one on parent involvement as it relates to

communities and families of color, and the other on strategies for providing PA programs for incarcerated parents, conduct two teleconference trainings, provide training and technical assistance to implement PA services in up to six SafeFutures Program sites, expand the number of PA affiliates working with the Juvenile Justice Project, and publish and disseminate a ''PA Best Practices'' manual.

The project will be implemented by the current grantee, PA. No additional applications will be solicited in FY 1996.

Lowcountry Children's Center, Inc.*

OJJDP will continue to fund Lowcountry Children's Center, Inc. (LCC) of Charleston, South Carolina in its expansion and coordination of the services required to create a model multi disciplinary, crisis intervention program for child victims of sexual assault and their families. LCC's goals are to: (1) continue their existing multi disciplinary services; (2) enhance support and coordination between law enforcement and the Solicitor's (prosecutors) office in cases concerning allegations of child physical and sexual assault; (3) provide medical examination in a timely manner; and (4) collect and analyze data regarding the demographics of child victims and their families and the characteristics of the perpetrator, the sexual assault, and the community response. In 1995, as a result of this multi disciplinary approach, LCC has exceeded its initial projections regarding the number of individual children who have been assessed and the number of clinical treatment units provided to these children and their families (as of December 31, 1995). LCC provided physical examinations for 194 children alleged to be victims of sexual abuse in a child-oriented environment and in a timely manner.

This project will be continued by the current grantee, LCC, Inc. No additional applications will be solicited in FY 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Office for Victims of Crime Fiscal Year 1996 Discretionary Program Plan

Victim Services 2000: A Vision for the 21st Century

Introduction

The Office for Victims of Crime (OVC) is pleased to announce its Discretionary Program Plan for Fiscal Year 1996 (FY96). OVC was created to help ensure justice and healing for our nation's crime victims. It carries out this broad mandate by funding crucial victim services, supporting training for the diverse professionals who work with crime victims, and developing programs to enhance victims' rights and services.

OVC administers two formula and many discretionary grant programs designed to benefit victims. These programs are funded by the Crime Victims Fund, which is derived from the fines, penalty assessments, and bail forfeitures of Federal criminal offenders—not from tax dollars. In FY96, OVC has approximately $220 million to support critical services to crime victims, national-scope training and technical assistance, and demonstration programs. Under the Victims of Crime Act (VOCA), 97 percent of this money is allocated to States for the funding of victim assistance and compensation programs. Three percent of the Fund's annual collections must be spent for discretionary programs, and under the Children's Justice Act, $1.5 million is allocated for programs to improve the handling of child abuse cases in Indian Country.

This year's planned scope of activities to benefit crime victims is OVC's most comprehensive to date and includes the office's first major demonstration project. Spurred on by the fast approaching millennium, OVC seeks to create a blueprint for communities to build integrated, inclusive environments where service providers work together in one location to care for crime victims. It plans to offer communities the information, training, tools, and technical assistance that they need to create supportive, multi-disciplinary facilities designed especially for victims. Appropriate to this goal, the theme of the program plan is ''Victim Services 2000: A Vision for the 21st Century.''

Last year, OVC launched several major programs:

- The National Crime Victims Agenda, a project to (1) serve as a guide for long-term action to improve victims' rights and services in future years, and (2) update the 1982 President's Task Force Report on Victims of Crime by describing the progress on victims' issues during the past fourteen years;
- The publication of bulletins describing promising practices that are currently used by diverse victim service providers, including law enforcement, prosecution, medical, and corrections personnel;
- Projects to expand the capacity of the Federal criminal justice system and Indian Country to respond to crime victims; and
- The National Victim Assistance Academy, which offers comprehensive, cutting edge training presented by leaders in the field to victim service providers.

Building on the achievements of past efforts and guided by extensive input from its numerous constituent groups, OVC will fund the following major FY96 initiatives:

- The completion of the National Crime Victims Agenda project and the publication of a long-term action plan for supporting crime victims;
- Victim Services 2000, a strategy to support communities in implementing comprehensive, collaborative services for all crime victims in a victim-centered environment that integrates many of the promising practices identified by FY95 grantees;
- An expanded National Victim Assistance Academy, simultaneously conducted at three sites through an interactive video hook-up, which will provide intensive education and training for policy makers and practitioners, as well as a training of trainers seminar to build expertise and promote leadership in the victim services field;
- The new Training and Technical Assistance Center, which will funnel resources to local, State, tribal, and Federal agencies to strengthen their capacity to serve crime victims;
- A major effort to improve the response of communities and the juvenile justice system to victims of juvenile offenders and gang violence; and
- A comprehensive plan to expand victim-witness training in the Federal system, including funding of full-time trainers for U.S. Attorneys' Offices and the Federal Bureau of Investigation (FBI), demonstration projects to improve services to white-collar crime and bank robbery victims, and major new initiatives in Indian Country to improve the handling of child abuse and domestic violence cases.

Many programs in OVC's FY96 plan grew out of dozens of meetings with constituent groups around the country and were developed in partnership with other agencies. These include other bureaus in the Office of Justice Programs (OJP); Department of Justice (DOJ) offices, including the Executive Office for U.S. Attorneys, the Violence Against Women Office, and the Office for Policy Development; as well as other Federal agencies. For example, the TRIAD Program, which is a partnership between older Americans and law enforcement personnel to improve services to elderly crime victims, has been supported by OVC, the Bureau of

Justice Assistance (BJA), and the Administration on Aging at the Department of Health and Human Services. TRIAD was developed by the American Association of Retired Persons, the International Association of Chiefs of Police, and the National Sheriffs' Association and has established over 260 local programs nationwide.

Among the many other examples of collaboration is the Attorney General's Indian Country Justice Initiative, which funds comprehensive services for two Indian tribes. It is a cooperative effort between the Administrative Office of the U.S. Courts, the Department of the Interior, and various DOJ components, including the Criminal Division, the Office of Tribal Justice, the Office of Policy Development, and OVC, as well as other OJP bureaus.

In this plan, the discretionary programs are separated into five major categories: The Vision, Voices from the Field, Building Vital Capacity in Victim Services, VOCA Enhancements, and Victim Assistance in Indian Country.

- The first category—''The Vision''—exemplifies the overall theme and includes the National Crime Victims Agenda project, the demonstration initiative Victim Services 2000, and the National Victim Assistance Academy. Other programs in this section are designed to fill gaps in existing services and gather information on promising practices that have not yet been identified and examined.
- Programs included under the heading ''Voices from the Field'' offer resources to fund projects that are generated from the field and will have a national impact on improving services to crime victims. They may include demonstration projects, training efforts, and materials such as films, curricula, brochures, and interactive training packages.
- The third category—''Building Vital Capacity in Victim Services''—includes other programs designed to expand the ability of local, State, and Federal agencies to serve crime victims. Examples of these programs are the Trainers Bureau, which provides national experts to local communities and agencies, and the Community Crisis Response Program, which makes teams of trained crisis responders immediately available to assist communities in the wake of major violent incidents.
- Programs under ''VOCA Enhancements'' direct discretionary funds to improve the effectiveness of State victim compensation and assistance programs, which receive the vast majority of Crime Victims Fund monies each year. A mentoring program and training conferences are included.
- Finally, ''Victim Assistance in Indian Country'' (VAIC) encompasses a host of programs designed to meet the needs of tribal communities in working with crime victims and enhancing system capacities. One major project supports over 30 direct service programs on Indian reservations. Another, the Children's Justice Act Discretionary Grant Program for Native Americans, makes direct grants to tribes to improve their response to child abuse cases and supports the development of related training materials.

Within each of the five categories, programs are designated as competitive or non-competitive. Competitive programs are those for which OVC is inviting proposals. Non-competitive programs include most of the programs directed to support enhancements of services to Federal crime victims, many continuations of current grants, collaborative efforts in which OVC will participate but not award a new grant, and specific programmatic activities that OVC will conduct internally.

This plan is a summary of the projects OVC plans to support during the coming funding cycle. The competitive projects are open to public and private not-for-profit organizations. Recent legislation has provided OVC with the authority to fund demonstration projects, but OVC is not authorized to support research, evaluation, or prevention activities. Most competitive programs, unless clearly designated for local, State, or regional purposes, must be national in scope. Anticipated funding levels, which are listed for some programs for FY97 and future years, are not guaranteed but are contingent upon the amount of funding that becomes available in those years for discretionary purposes.

Application Process

A Program Announcement and Application Kit, which will be available beginning May 20, 1996 will serve as a request for proposals. It will contain detailed descriptions of competitive programs and complete forms and instructions for developing an application. To receive a Program Announcement and Application Kit, please call 202/307–5983 or write to: Office for Victims of Crime, 1301 Pennsylvania Avenue, Suite 200, NW, Washington, D.C. 20531.

Competitive Programs. The Program Announcement and Application Kit will describe for each competitive program: the purpose of the program, background, goal, program strategy, eligibility requirements, award period, award amount, and application due date. Application due dates will vary for different programs. A panel of experts will be established for most competitive program areas to review and rank the applications. Awards will be made to organizations and agencies offering the greatest potential for achieving the programs' goals on the basis of information provided in the applicants' proposals and assessments of past performance on OVC/OJP grants. Funding decisions will be made by the Director of OVC. All applications for competitive programs are due July 15, 1996 except for the Field Generated/National Impact Projects and the Action Partnerships with Professional Organizations. Applications for these two projects are due September 1, 1996.

Non-Competitive Programs. OVC staff will contact applicants for non-competitive programs to discuss application requirements and due dates.

Solicitation of Concept Papers. OVC invites eligible public and private not-for-profit agencies to submit concept papers for potential funding in FY97. Agencies submitting outstanding concept papers will be invited to submit complete proposals for funding consideration. Concept papers will be accepted on two dates: October 1, 1996 and February 1, 1997.

We hope that the following program plan will generate creative and comprehensive proposals from diverse applicants and will nurture improved and expanded services needed to ensure justice and healing for all crime victims.

Aileen Adams,

Director, Office for Victims of Crime.

Summary of Competitive Projects

To facilitate applications, competitive projects which are described in various places throughout the program plan are together below:

1. Victim Services 2000 ($200,000 in FY96 and substantial continuation of funding in FY97–2000)
2. Victims of Gang Violence ($125,000 in FY96 and in FY97)
3. Juvenile Court Response to Victims of Juvenile Offenders ($150,000 in FY96 and in FY97)
4. School Demonstration Projects to Assist Victims and Witnesses ($200,000 in FY97)
5. Sexual Victimization of Youth Symposium ($50,000 in FY96)
6. Assisting Disabled Victims of Crime Symposium ($50,000 in FY96)
7. Victim Assistance for Stalking Victims ($75,000 in FY96 and in FY97)
8. Cultural Considerations in Assisting Victims of Sexual and Physical

Violence ($75,000 in FY96 and in FY97)
9. Restitution: Promising Practices ($100,000 in FY96)
10. Sexual Assault Curriculum and Training Project ($100,000 in FY96 and in FY97)
11. Field Generated National Impact Projects ($550,000 in FY96 and in FY97)
12. Concept Papers for FY97 ($600,000 in FY97)
13. State and Regional Conference Support Initiative ($75,000 in FY96)
14. Innovative Federal Victim and Witness Practices ($100,000 in FY96)
15. Capacity Building Technical Assistance (up to $10,000 per site in FY96)
16. Action Partnerships with Professional Organizations ($120,000 in FY97)
17. Resource Materials for Victim Organizations ($125,000 in FY96)
18. OVC ''Help'' Series ($30,000 in FY97)
19. Regional Technical Assistance Meetings for State VOCA Administrators ($25,000 in FY97)
20. Children's Advocacy Centers in Indian Country ($50,000 in FY96)
21. Topic-Specific Monographs ($75,000 in FY96)

I. The Vision

A. Comprehensive Initiatives

1. The National Crime Victims Agenda ($125,000)—Non-Competitive

The National Crime Victims Agenda report will be published in 1996. The report will focus on promising practices in a variety of disciplines and crime victim categories, and will encourage reforms that build on the recommendations presented in the 1982 Final Report of the President's Task Force on Victims of Crime. A funding priority for OVC in 1997 is to support programs that implement key recommendations of the Agenda report.

2. Victim Services 2000 ($200,000 in FY96 and Substantial Continuation of Funding in FY97–2000)—Competitive

Victim Services 2000 will support the development of a comprehensive victim service system in at least two select communities—one in an urban setting and the other in a rural area. The purpose of this initiative is to support comprehensive, collaborative services for all crime victims in a victim-centered environment. Demonstration sites will involve victim service practitioners, criminal justice and local emergency response personnel, support groups, medical and mental health providers, clergy, schools, youth, and youth workers as active participants in the planning and implementation of their programs. Sites also will be encouraged to develop linkages with the media, professional educators, legislators and other elected leaders, community leaders, the private sector, professional associations, and others to improve services to victims. The integration of recently developed technologies, special service settings, community-based programs, appropriate State and local laws, interagency linkages, and an internal assessment process will be critical to the success of these Victim Services 2000 laboratories, which will function as training sites for other communities.

The initiative will require three phases: community planning and model development, component implementation, and training and information dissemination. During the first phase, sites will conduct a collaborative needs assessment and planning process, creating a model for a comprehensive victim service environment in their communities and a detailed plan for implementing the model. In subsequent years, they will implement the plan by enhancing existing services, filling service gaps, and integrating new promising programs and strategies into their system of services. Once the demonstration sites are fully implemented, they will assume two additional functions: to serve as a training laboratory for victim service personnel from other communities and to produce information useful to others wishing to replicate or adapt their model.

The solicitation for the initiative will be directed toward communities that have already made substantial progress in developing a comprehensive and coordinated system of victim services. Applicants are expected to collaborate with other relevant public and private agencies that serve crime victims locally and document these relationships through written interagency agreements and commitments to share resources. First year funding will be in the amount of $100,000 for each site. Based upon grantee performance and availability of future funds, substantial funding for four subsequent years is anticipated.

3. National Victim Assistance Academy

In 1995, OVC initiated the National Victim Assistance Academy, the first course of its kind to train victim practitioners and policy makers. The Academy offered basic and advanced interdisciplinary victim assistance training to students from across the country. In 1996, OVC will expand the effort by weaving cutting edge and tested training materials into a program that encourages excellence in leadership and in daily practice. The Academy will offer specialized training topics, basic and advanced instruction, and a train the trainer series to meet the needs of victim service providers and criminal justice personnel at local, tribal, State, and Federal levels. In addition, OVC will conduct a program assessment and then craft a plan for building a comprehensive, multi-faceted Academy that coordinates the best adult education training technologies with OVC's resources and current training programs.

National Victim Assistance Academy Programs ($207,000)—Non-Competitive. OVC will provide second year funding for a five-day national victim assistance seminar for 120 victim service providers from the Federal, State, tribal, and local levels. The seminar will originate from a university campus located in Washington, D.C., and the instruction will be simultaneously broadcast to two additional campuses—one located in Kansas and the other in California. Each site will accommodate 40 students. In addition, the seminar faculty will conduct a two and one half day Train the Trainers program in Washington, D.C. for 30 victim service professionals who may serve as future seminar faculty in OVC or State sponsored victim service provider courses.

Train the Trainer Seminar Series ($450,000)—Non-Competitive. Another major component of the Academy is a train the trainer seminar series. Each year, several topics are identified for which there is an evident shortage of qualified trainers to address the needs of the field. For FY96, four topics have been identified to offer in this series: Hate/Bias Crime, Victim Assistance in Community Corrections, Responding to Staff Victimization in Correctional Agencies, and Death Notification. The Train the Trainer Seminar Series is described in greater detail below under ''Building Vital Capacity in Victim Services, Comprehensive Initiatives.''

Victim Assistance Training Strategies ($25,000)—Non-Competitive. This project will assess the various strategies used by OVC to offer training to the field, and lay the framework for an expanded Academy which will include many of those strategies as Academy components. This project is described below under ''Building Vital Capacity in Victim Services, Non-Competitive Projects.''

4. Comprehensive Initiative To Improve Services to Victims of Gang and Other Juvenile Violence

In FY96, OVC will launch a multi-faceted initiative to address the serious and growing problem of gang violence and its devastating impact on individuals and communities. The initiative includes the following component projects:

Victims of Gang Violence ($125,000 in FY96 and in FY97)—Competitive. This project will develop technical assistance materials to help victim service providers better serve victims of gang-related crime. Due to the fear of retaliation, revenge, and intimidation that commonly accompany gang violence, crime victims or their survivors are often afraid to exercise certain basic rights such as appearing in court, making an impact statement, pursuing restitution, or participating in other case events. In addition, these victims are often blamed for the violence or dismissed as contributing to the crime. This project will identify and document the successful ways agencies and communities are serving these victims and their families and describe practical applications for criminal justice and victim services staff. A package of technical assistance materials will be developed.

Simultaneously, the grantee will work with the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) demonstration sites, which are currently implementing that office's Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program, and assist them in developing policies, procedures, and services that address the needs of the victims of gang violence. It is anticipated that this assistance process will aid the grantee in developing the technical assistance package and also provide ample opportunity for pilot-testing the materials.

Juvenile Court Response to Victims of Juvenile Offenders ($150,000 in FY96 and in FY97)—Competitive. In 1995, OVC funded three regional forums to assess the needs of victims of juvenile offenders and to propose action steps to address these needs. Although the recommendations generated by these forums are not yet available, information learned in the assessment phase of the project can serve as a starting point for focusing additional resources on areas of identified need. One such area is information and education on victim-related issues for juvenile court personnel and probation staff.

The recipient of this grant will conduct a nationwide survey of practices and programs of juvenile courts that address the needs of crime victims. From information gathered by the survey and through a general search for additional promising practices, the grantee will develop a training and technical assistance package. The package should cover such topics as victims' legal and procedural rights, victim impact statements, restitution orders, and other programs and services that target victims of juvenile offenders for services or involve them in the court process. While the package will be directed primarily toward an audience of juvenile court personnel and probation staff, it also should provide useful information for victim service providers who work with victims of juvenile offenders. A training event will pilot-test the materials.

In FY97, court jurisdictions will be invited to submit applications to receive intensive training and technical assistance from the grantee. Applicants with extensive prior experience in providing judicial education and training are encouraged to apply for this grant.

Symposium on Gang Violence ($25,000)—Non-Competitive. Together with OJJDP, OVC will co-sponsor a one-day meeting of gang violence victims and victim service providers in conjunction with a larger conference on gang violence being held in June 1996. Participants will explore the strategies that seem to work in their communities, the current connections that exist among organizations serving victims of gang violence, the value in bringing these groups together, and the role that government can play in helping to reduce gang violence. Funding will cover expenses for victims of gang violence and for service providers to attend a planning session and the gang violence conference.

School Demonstration Projects to Assist Victims and Witnesses ($200,000 In FY97)—Competitive. OVC plans to dedicate $200,000 to support two demonstration programs located in schools to assist pre-teen and teenage victims and witnesses of gang violence and other juvenile crimes. The purpose of these projects is to establish comprehensive programs for these young victims which can be replicated in additional communities. To be eligible for the project, a school should have or be willing to offer the following resources: an acceptable course of study on victim issues, which includes material on the impact of crime, presented in part by victims themselves; training on peer support, crisis response, and mediation techniques; individual and group counseling services; avenues for parental involvement; liaison with local advocacy programs to support youth who must deal with the court system; and support services for victimized teachers.

Teleconference for Teachers on Staff Victimization. In FY97, OVC anticipates funding a teleconference for teachers on the topic of staff victimization, that is, victimization in the school and elsewhere that occurs as a consequence of their professional role.

B. Competitive Projects

1. Issue Symposia ($100,000)

OVC will fund two two-day symposia in the amount of $50,000 each on important and emerging topics in the victims field. As a substantive understanding of each topic is critical to the success of this program, it is likely that separate awards will be made to applicant organizations displaying the greatest depth of knowledge and experience in each area. The purpose of the symposia is to stimulate discussion on specific victim-related issues and to generate recommendations and action plans for addressing the issues effectively. Between 15 and 20 experts in a given topic area will be invited to attend each event. The symposium facilitator will survey the field for promising and model practices, relevant research and/or evaluation findings, and available statistics, and will provide this material to participants in advance of the event. The agenda will include expert presentations, round-table discussions, and the development of an action plan for the field that outlines specific steps for outreach, training and technical assistance, and public education. Specific recommendations for practitioners also will be generated where appropriate. For each event, the facilitator will report on the group's findings, recommendations, and action plan. These highlights will be summarized in a short monograph suitable for publication as an OVC bulletin. The symposia topics are:

Sexual Victimization of Youth. National-scope studies such as Rape in America have documented the prevalence of sexual violence in the lives of youth. Failure to intervene during these formative years can lead to long lasting mental health problems and vulnerability to further victimization. Nonetheless, adolescent and pre-adolescent victims of sexual violence remain a population underserved by victim assistance professionals. The symposium ''Sexual Victimization of Youth'' will focus on effective means of reaching and assisting young victims.

Assisting Disabled Victims of Crime. Persons with physical and

developmental disabilities face increased vulnerability to crime victimization, and at the same time, remain a population acutely underserved by victim assistance providers. Passage of the Americans with Disabilities Act has heightened the visibility of the issue and prompted thought about how service providers can best extend the reach of their services to disabled victims. ''Assisting Disabled Victims of Crime'' will explore issues of service accessibility and appropriateness, as well as legal considerations arising from the law.

2. Victim Assistance for Stalking Victims ($75,000 in FY96 and in FY97)

Although almost every State has passed anti-stalking legislation and developed a model code, communities are challenged with enforcing the new laws. This project will build upon the model anti-stalking code and recommendations developed by the National Criminal Justice Association under grants from OVC, the National Institute of Justice (NIJ), and BJA. The project will support a survey of promising practices for effectively managing stalking cases in the criminal justice system, with particular attention to protection and support for victims. The grant recipient will produce a compendium of promising practices in States and localities, with an in-depth focus on the case management systems implemented at three model sites. The grantee will examine strategies for coordination between victim assistance providers and members of the criminal justice system, including law enforcement, prosecutors, and judges. The grantee also will document innovative laws and policies, relevant and reliable case law, and the use of technology (e.g., special monitoring equipment) to protect victims. The grantee's final compendium will describe key elements of a model system response to stalking victims. Grant activities will cover two years with $75,000 available in FY96 and an additional $75,000 available for training and technical assistance in FY97.

3. Cultural Considerations in Assisting Victims of Sexual and Physical Violence ($75,000 in FY96 and in FY97)

Female victims of sexual and physical violence come from many cultural and ethnic backgrounds. The diversity of this population presents victim advocates and criminal justice professionals with unique challenges in outreach and service delivery. Language barriers, cultural stigmas attached to being sexually victimized or battered, and lack of awareness of the availability of services often deprive women and their children of critical victim assistance services and criminal justice protections. This program will train domestic violence and sexual assault victim advocates, law enforcement, and attorneys to be more responsive to the female victims of diverse cultural and ethnic backgrounds. A major portion of the training will be devoted to implementation of the Violence Against Women provisions of the Violent Crime Control and Law Enforcement Act of 1994.

4. Restitution: Promising Practices ($100,000)

Restitution is a direct and positive way to hold offenders accountable for the harm caused by their offenses. With widespread support from many victims and members of the general public, restitution has increasingly become mandatory for offenders in both juvenile and adult courts at the local, State, and Federal levels. Yet many jurisdictions find that orders of restitution are extremely difficult to enforce. Barriers to enforcement include inadequate administrative policies and practices, as well as the indigence of some offenders. This project, jointly sponsored by OVC and BJA, will identify promising approaches used in the criminal and juvenile justice systems to establish and enforce orders of restitution and to ensure that victims receive the payments due them. Such approaches might include the use of efficient, simple-to-use software programs to track and manage restitution orders; procedures for assessing victim losses to determine appropriate amounts of restitution to order; and strategies for collecting restitution payments. The grantee will produce a compendium of promising practices and accompanying training and technical assistance materials to assist jurisdictions that wish to implement them. In addition, limited technical assistance will be provided to sites seeking to improve their capacity to carry out court-ordered restitution.

5. Sexual Assault Curriculum and Training Project ($100,000 in FY96 and in FY97)

OVC will fund a three phased project to develop comprehensive training for rape crisis counselors and victim advocates who are responsible for providing services and securing rights for adult victims of sexual assault. In phase one of the project, the grantee will conduct an extensive literature search and review and develop a comprehensive training curriculum and train the trainer guidebook for program managers and statewide coalition leaders. The curriculum will present effective service delivery strategies, including crisis counseling, support groups, criminal justice advocacy, outreach, and referral services. Since the curriculum and guidebook will build upon existing training curricula and will include standard core elements, these products can be developed concurrently with the literature review. Phase two of the project will focus on the delivery of training to service providers and victim advocates at national, regional, and statewide training events. In the final phase of the project, it is anticipated that the grantee will present the training as part of the train the trainer component of the OVC National Victim Assistance Academy. In addition, the grantee will assess the training and make recommendations for modifications and further dissemination of materials. Highlights of the training program will be summarized in a short monograph suitable for publication as an OVC bulletin. Continuation funding in FY98 will be considered, depending upon the success of the project.

C. Non-Competitive Projects

1. Law School Clinics as Resources Against Family Violence ($25,000)

In collaboration with the Violence Against Women Grants Office and the American Bar Association, OVC will support regional training conferences focusing on community responses to family violence. The target audience of the conference series consists of victim advocates and law school clinic personnel. The purpose of the grant is to encourage law school clinics to develop or enhance clinical programs that address family violence issues and to facilitate a recognition among victim advocates of law schools as valuable resources. The grantee will develop a monograph describing innovative services for family violence victims which will be disseminated to law schools nationwide.

2. Teleconference on Staff Victimization in Correctional Facilities ($50,000)

A two-hour teleconference on staff victimization in juvenile and adult correctional facilities will be conducted in collaboration with the National Institute of Corrections (NIC) and OJJDP. The teleconference, transmitted via satellite, will allow participants to view the event ''live'' on a television or a large projection screen and ask questions of the experts by telephone during the program. OVC, OJJDP, and NIC staff will jointly plan the teleconference agenda. They will competitively contract for both the

production of short videotaped segments to highlight key elements of the topic and the ''uplink'' transmission of the event. Sites will register to serve as host sites, and each will designate a contact person to coordinate the teleconference, duplicate camera-ready materials for the participants, and submit participant evaluations to OVC.

3. Domestic Violence Against Women Technical Assistance Program

Last year, OVC provided seed money so that customized, multi-disciplinary training could be provided to jurisdictions seeking to create a coordinated response to family violence. In 1996, OVC will continue to work with the Violence Against Women Grants Office to provide Services*Training*Officers*Prosecutors (STOP) grantees technical assistance, including site visits for family violence teams to observe innovative programs in operation.

4. Safe Kids/Safe Streets: Community Based Approaches To Intervening in Child Abuse and Neglect ($100,000 in FY97)

OVC will join with other OJP Bureaus to support the Child Safe Project, which will coordinate Federal, State, and local resources into a comprehensive prevention and intervention program for child victims and their families. This OJP-wide program will create systemic reforms to improve services for abused children; provide training and technical assistance support to practitioners who serve child victims and their families; strengthen a continuum of family support services to assure that assessment, counseling, and victim assistance services are available; assure the uniformity of evaluation protocols across sites; and provide prevention education and public information. OVC will provide selected grantees with training, technical assistance, and training materials on improving services for child victims. Assistance will focus on expanding the availability of medical services to sexually and physically abused children and mentoring or training programs for communities wishing to establish a Children's Advocacy Center. New technologies, use of specially trained nurse practitioners, and coordination with facilities that are providing quality forensic examinations and other medical services to child victims are some of the approaches that will be utilized to improve medical services for young victims.

5. Child Sexual Exploitation: Improving Investigations and Protecting Victims ($189,000)

OVC and OJJDP will jointly support the continuation of a project that has developed a model for linking criminal justice personnel across jurisdictional boundaries and sources of victim assistance when sexually exploited children or youth are identified. During this phase, the grantee will: develop a ''promising practices'' report to document varying approaches to multi-jurisdictional collaboration; organize a conference, in conjunction with the 1997 National Symposium on Child Sexual Abuse, to bring together existing multi-jurisdictional teams; and develop a videotape and users' guide to showcase models for multi-jurisdictional collaboration.

6. FBI Victim-Witness Programs ($100,000)

OVC will provide up to $100,000 to support one demonstration victim-witness program in an FBI field office or resident agency. OVC will work with the FBI's Victim-Witness Assistance Program to announce the availability of the funding to field agencies. Applicant sites will submit a proposed implementation plan and budget. The selected project will identify, implement, and document promising practices for working with crime victims. Information about the results of this demonstration program will be distributed to other FBI field offices for possible replication. OVC will provide funding for one year, with a possible second year renewal.

7. U.S. Attorney Victim-Witness Program ($150,000)

OVC and BJA will provide joint second year funding to support a demonstration victim-witness assistance program in the Eastern District of Wisconsin U.S. Attorney's Office. The purpose of the program is to improve the capability of U.S. Attorneys' Offices to respond to the rights and needs of Federal crime victims. Funds provide for the hiring of a victim-witness counselor advocate, a community drug victim specialist, and a victim-witness paralegal assistant. OVC and the U.S. Attorney's Office will compile the program's promising practices and disseminate them to other U.S. Attorneys— Offices for replication.

8. National Symposium on Child Sexual Abuse ($37,000)

OVC will support the participation of teams of Federal criminal justice personnel nominated by the U.S. Attorneys' Offices to attend the National Symposium on Child Sexual Abuse. OVC will also sponsor workshops specific to the unique dynamics attendant to Federal sexual abuse cases.

9. White-Collar Crime Victim Advocate Pilot Project ($100,000)

OVC will support a pilot project in the Northern District of California U.S. Attorney's Office to improve services for white-collar crime victims. The project will identify, implement, and document promising practices for working with white-collar crime victims. Funds will be used to hire a white-collar crime victim advocate who will aid in identifying and recovering assets for victims. The advocate will work under the direction of the Chief of the Economic Crimes Division and will work closely with other components including the Asset Forfeiture Division, criminal investigators, the Financial Litigation Unit, U.S. Marshals, and the Victim-Witness Coordinator. Funds will also provide for computer support and travel. As part of the project, a representative of the U.S. Attorney's Office will participate in an ad-hoc working group which will: (1) Identify and assess materials and practices that could benefit white-collar crime victims; (2) produce a resource kit that includes a victim pamphlet, victim handbook, and videotape; and (3) create a Victim-Witness Coordinator guide to assisting white-collar crime victims. Information about the results of this demonstration program will be distributed to other U.S. Attorneys— Offices for possible replication.

10. U.S. Parole Commission Interagency Agreement ($54,000)

Through an interagency agreement with the U.S. Parole Commission, OVC will fund a Victim-Witness Coordinator position to provide services for victims and witnesses with respect to attendance at Federal parole revocation hearings and notification of the results of those hearings. The Victim-Witness Coordinator also will coordinate with the Federal Bureau of Prisons when offenders are returned to prison to ensure that victims of the original Federal offenses are notified of the offenders' return to prison, any subsequent parole considerations, and the offenders' eventual release. At the end of the first year of this project, the Parole Commission will conduct an evaluation of the effort, including a review of case files for victim and witness appearance rates, and will survey victims, witnesses, and parole staff through questionnaires or phone interviews. The results of this review and survey may provide information

that can be used in State systems. The project might also document promising practices for Federal cases in which post-release supervision is provided by United States Probation Officers and in revocation proceedings conducted by the Federal Courts.

11. Children's Advocacy Center Pilot Project ($95,000)

Through funds provided to the U.S. Attorney's Office in the District of Columbia, OVC will support the establishment of a Children's Advocacy Center demonstration site for Federal prosecutors and other agencies. The Center will showcase interagency services in a child-oriented environment. The multi-disciplinary Center will reduce the trauma to children by implementing a joint interview/assessment process among key agencies, thus minimizing the number of interviews. Program materials such as forms, letters, memoranda of agreement, policies, procedures, brochures, and informational materials for child victims and their families will be compiled and shared with other sites wishing to replicate or develop similar services for child victims.

12. International Victim Assistance Summit ($15,000)

OVC will provide funding to assist the National Organization for Victim Assistance in organizing and implementing a summit on international victim assistance issues involving expert leaders from around the world.

II. Voices From the Field

A. Comprehensive Initiatives

1. Field Generated National Impact Projects ($550,000 in FY96 and in FY97)—Competitive

This program is designed to give the field wide latitude in making proposals to improve practices and enhance crime victims' access to rights and services. OVC invites the submission of proposals for training and technical assistance projects that: (1) Address an area of ongoing or emerging need; (2) are national in scope or will have a national impact; and (3) will provide products or materials that may be easily adapted, replicated, and disseminated to practitioners in the field. Proposals must be congruent with OVC's discretionary funding authority to support demonstration, training, and technical assistance projects that improve the response to and services for crime victims. Activities outside the scope of OVC's funding authority include prevention, treatment for perpetrators, research, evaluation, and other activities not directly linked to assisting crime victims. Proposed projects may range from $50,000 to $100,000. Consideration will be given to projects that warrant multi-year funding based on project design. However, each phase should be capable of standing alone. Examples of the kinds of activities that can be supported include, but are not limited to:

- One to two day symposia on promising practices in a given topic area. Products will include an inventory of practices and programs; a list of expert trainers/practitioners; and symposia proceedings, and suggested strategies for action.
- Training programs for trainers and practitioners in a given program area. Train the trainer programs using existing and demonstrated successful curricula as well as the development of new training materials are encouraged. Products will include a survey of promising practices for new programs or an update of the curricula for existing programs; development and pilot-testing of training curricula and participant manuals; and plans to train with or directly disseminate the training products.
- Compendia of promising practices and program guidelines. Products will include a survey of the field; inventory and identification of promising approaches; identification of core programmatic elements and development of model programs or practices briefs; and publication of a short bulletin.
- Training videotapes with instructional booklets, for use by a trainer or as stand-alone training aids.
- Innovative applications of technology, such as interactive computerized training materials, or instruction and guidance in using other emerging technologies to inform, assist, or improve services to crime victims.
- Demonstration projects built on existing innovative programs that can serve as learning laboratories or production of information that enables others to replicate promising policies, practices, or entire programs.

Examples of topics might include, but are not limited to: victim notification systems; training programs for judges, prosecutors, and law enforcement officers; train the trainer programs using curricula which have been demonstrated to be successful; victim assistance programs tailored to meet the unique needs of campus, white-collar crime, and bank robbery victims; and assistance practices that are responsive to ''hidden'' or underserved victim populations.

Applicants for train the trainer projects must include the curriculum they intend to use. Proposals involving collaboration between public, not-for-profit, and private sector organizations are encouraged.

OVC also is seeking to stimulate a response to crime victims from diverse fields such as the religious community, private non-profit agencies that link with the corporate community to address victim issues (such as workplace violence), and partnerships between organizations that result in expanded services for crime victims. In order to draw diverse skill, experience, and knowledge from the range of organizations that address crime victim issues, no more than two proposals or more than $150,000 will be considered for award to any single victim organization in a single year.

B. Competitive Programs

1. Solicitation of Concept Papers for FY97 ($600,000)

Innovative Training, Technical Assistance and Demonstration Projects

In FY96, OVC anticipates funding five or six of the highest ranking applications submitted under ''Field Generated National Impact Projects,'' which is described above. OVC is also inviting the submission of concept papers on victim-related topics. OVC will review and rank the papers, and invite the highest ranking applicants to submit full proposals for FY97 funding consideration. Concept papers will enable OVC to explore new ideas without burdening prospective applicants, and also permit OVC to project more accurately the nature and amount of future grant awards. To be considered for funding, concept papers must address program areas within OVC's funding authority. Please see ''Field Generated National Impact Projects'' above. The examples provided, which illustrate permissible activities, are not intended to limit innovative ideas or approaches; the examples should not be construed as the only areas of interest or topics that will be funded. OVC's Program Announcement and Application Kit will give further guidance on preparing and submitting concept papers, which are due October 1, 1996 or February 1, 1997 for two cycles of review and funding.

Special Focus: Assisting the Victims of Crime in the Adjudicative and Administrative Aspects of Criminal, Civil, and Tribal Courts

OVC recognizes the central role courts play in ensuring the delivery of justice, enhancing victims' perceptions that

justice has been done, and improving their sense of safety and redress. In recent years, court personnel—judges, court administrators, and clerks of court—have increasingly developed innovative strategies for assisting the victims of crime in both adjudicative and administrative aspects of criminal, civil, tribal, and juvenile courts. OVC seeks concept papers from courts, court-related organizations, and other agencies with relevant expertise to support activities that enhance or demonstrate innovations in courts' responses to and activities with victims of crime, and that can be replicated in other jurisdictions. Such court activities can involve, but are not limited to: (1) The development and delivery of education and training or curricula development for court personnel, victim advocates, and victims, with particular emphasis on increasing coordination with the prosecutor and other components of the criminal justice system; (2) activities to improve victims' access to justice, including the access of those proceeding *pro se* in related civil/domestic relations matters; (3) diagnostic services and referrals to appropriate community services; (4) programs to increase the safety of victims and witnesses in cases of stalking, threats, and intimidation and to reduce their exposure to the offender and the offender's supporters throughout the trial period; and (5) programs that ensure victims are kept informed of, prepared for, and have the opportunity to be heard at the various stages of the court process. Other issues of particular interest that proposed projects might address are: the impact of the media in high profile cases; gaining acceptance and understanding of the role of victim advocates in the judicial system; and procedures that limit the trauma of testimony by making accommodations to victims with special needs, such as children and the disabled.

2. State and Regional Conference Support Initiative ($75,000)

In FY96, OVC will continue its successful Conference Support Training Initiative. This comprehensive, multi-disciplinary approach to training has provided an opportunity for nearly 10,000 victim assistance providers, crime victims, law enforcement officials, prosecutors, and allied professionals to attend cost-effective State, regional, and national victim assistance conferences. Over the past three years, OVC has co-sponsored 35 State and regional victim assistance conferences, as well as tracks of victim assistance training at four national conferences of allied professions. Through this initiative, OVC will continue to fund State and regional training events. Priority funding consideration will be given to States that have not previously participated in this project. A portion of the training workshops must be devoted to Federal crime victim issues. These issues may include bank robbery, bias/hate crimes, white-collar crime, and crimes occurring on Federal lands or in Indian Country.

3. Innovative Federal Victim and Witness Practices ($100,000)

OVC will entertain proposals for identifying promising practices in addressing Federal victim and witness-related issues.

C. Non-Competitive Projects

1. Federal Crime Victim Assistance Fund ($75,000)

Through an interagency agreement with the Executive Office of U.S. Attorneys, OVC will provide financial assistance to victims of Federal crime when other resources are not available. OVC will respond to requests from individual U.S. Attorneys' Offices for assistance in meeting the direct and immediate needs of Federal crime victims.

2. District Specific Training ($80,000)

OVC will provide funding to Federal Districts to support training conferences and seminars addressing Federal victims' rights issues and compliance with the *Attorney General Guidelines for Victim and Witness Assistance.* The purpose of this program is to allow U.S. Attorneys' Offices to sponsor training events that meet local or regional needs.

3. Oklahoma City Federal Victim Assistance Program ($100,000 in FY96 and in FY97)

Through an interagency agreement with the Executive Office of U.S. Attorneys, OVC will make funding available to aid victims of the Alfred P. Murrah Federal building bombing. OVC will respond to requests from the U.S. Attorney's Office in the Western District of Oklahoma for financial assistance to support transportation to the trial in Denver, Colorado, for temporary shelter, and for crisis counseling. OVC will make an additional $100,000 available for this program in FY97.

III. Building Vital Capacity in Victim Services

A. Comprehensive Initiatives

1. OVC Resource Center ($350,000)—Non-Competitive

The OVC Resource Center is a national clearinghouse of information concerning victim and witness assistance programs, victim compensation programs, and organizations from the private sector that assist victims and witnesses. It serves a broad constituency of individuals and organizations with professional, academic, and advocacy-related interests in the welfare of crime victims, including victim service providers, law enforcement agencies, clergy, prosecutors, health care practitioners, legislators, researchers, and victims. Key projects anticipated during FY96 include the establishment and distribution of an OVC newsletter, the development of new Internet/World Wide Web-based resources, and extensive conference activity. This initiative is supported jointly by OVC and BJA.

2. Training and Technical Assistance Center

In recent years, OVC has developed several new mechanisms to direct training and technical assistance toward building the capacities of victim service agencies, frequently in response to requests from individual agencies for help in dealing with specific topics or problems. The OVC Training and Technical Assistance Center will offer a centralized access point for information about OVC's training and technical assistance resources. It will develop and disseminate training and technical assistance materials on topics of interest to the field, and mobilize specialized teams to address these topics and other identified areas of need. The Center also will assess and evaluate the training and technical assistance provided by Center components to ensure that high standards of quality are maintained. During FY96, OVC will publish a Request for Proposal (RFP) to contract services for FY97–2000.

The Training and Technical Assistance Center will include:

Capacity Building Technical Assistance—Competitive. OVC is launching a technical assistance program designed to strengthen community-based statewide and national victim assistance organizations, coalitions, and support groups. There are currently over 8,000 local victim service programs, hundreds of statewide coalitions, and nearly a dozen national

victim organizations that have worked to make the criminal justice and social service systems more responsive to the needs and rights of crime victims. Although their accomplishments have been impressive, many grassroots, volunteer-powered agencies need organizational development assistance in order to ensure their continuation and nurture future growth. Through this program, such agencies may request the assistance of an expert or team of experts who can assess their current operations and advise them on strengthening their organizational structure and funding base, suggest strategies for networking and outreach, support their capacity to seed new chapters or services, and provide leadership and board development training. Interested organizations may apply to OVC for Capacity Building Technical Assistance, following application guidelines which will be described in the Program Announcement and Application Kit. The five top-ranking applicants will receive up to $10,000 in intensive, individualized technical assistance. This project will be coordinated with OVC's organizational development resource kit described below under the heading, ''Resource Materials for Victim Organizations.''

Trainers Bureau ($165,000 in FY96)—Non-Competitive. The Trainers Bureau is a mechanism for supporting cost-effective training and technical assistance to victim assistance programs and other agencies that deal with crime victims. Since its creation in 1994, the program has responded to more than 80 requests for a broad range of assistance. During FY96, OVC will publish a Request for Proposal (RFP) to contract services for FY97–2000. It is anticipated that this program will continue without interruption, and public and private not-for-profit agencies can continue to request assistance by contacting OVC for application instructions. BJA is collaborating with OVC in supporting this program.

The Trainer's Bureau also will support a conference for OVC's discretionary grantees that provides information on the best strategies for developing and conducting effective training events, incorporates new technologies, involves OVC grantees in summarizing their projects and accomplishments, and focuses on OVC staff and grantee reciprocal responsibilities. The purpose is to share information about all projects, promote networking, and provide a forum to discuss future activities that will improve the quality of OVC training and technical assistance products and services.

Community Crisis Response (CCR) ($25,000)—Non-Competitive. Through CCR, which was formerly called Immediate Response to Emerging Issues (IREP), OVC will continue to provide rapid response to requests for emergency training or technical assistance from communities and Federal, State, and local agencies responding to a major crisis involving multiple victims. Communities and agencies can continue to request assistance by contacting OVC for application instructions.

Victim Assistance Partnerships and Strategies for the 1996 Olympics—Non-Competitive. OVC will provide support to public and private partnerships in Atlanta, Georgia and surrounding communities to assist them in addressing the increased and special needs of people victimized during the 1996 Olympic Games. The designated lead local agency will convene a planning committee of Federal, State, and local officials and victim advocates to develop a crisis response plan and protocols and to facilitate memoranda of understanding among the relevant agencies to carry out the plan.

Conference and Meeting Support ($80,000)—Non-Competitive. This program will support logistics, planning, and travel-related costs for OVC-sponsored conferences and meetings. These events are likely to include:

- Focus groups that highlight major emerging issues. One topic OVC anticipates exploring through a focus group is victim assistance from the religious community. Since many victims and survivors seek counsel and support from their religious leaders, members of the clergy have a tremendous potential to assist crime victims. This focus group will recruit participants from the widest possible diversity of religious training institutions. A project advisory committee will be identified from staff of seminaries, bible colleges, rabbinical schools, and clerical training institutions, as well as from religious leaders who are involved in victim issues and victim advocates. Additional focus groups on other topics also may be convened.
- Meetings with OVC's various constituent groups, including State VOCA grantees.
- Support for Regional Coordination Initiative activities.
- Funding for unanticipated conferences and events that OVC may wish to conduct in the course of the year.

3. Regional Coordination Initiative—Non-Competitive

This initiative is designed to promote networking and collaboration among victim service professionals on a regional basis. It mobilizes teams of Regional Field Coordinators (RFCs), selected from experienced victim service providers, to develop and implement regional training and technical assistance projects on victims issues. Each of four regional teams plans and organizes a training or technical assistance activity that their group will sponsor during the year. Activities are selected based upon input gathered from victim service providers and allied professionals throughout each region. Funding for team activities will be provided through the Training and Technical Assistance Center.

4. Train the Trainer Seminar Series ($450,000)—Non-Competitive

Hate/Bias Crime ($150,000 in FY96 and in FY97)
Victim Assistance in Community Corrections ($100,000)
Responding to Staff Victimization in Correctional Agencies ($100,000)
Death Notification ($100,000)

OVC will sponsor a series of training for trainers seminars using curricula on topics of special interest that have already been developed through previous OVC grants. Between two and four seminars will be offered on each topic.

Using the curricula they have already developed, pilot-tested, and delivered, the Education Development Center will offer training on Hate/Bias Crime; the American Probation and Parole Association will present seminars on Victim Assistance in Community Corrections; the National Victim Center will offer training on Responding to Staff Victimization in Correctional Agencies; and Mothers Against Drunk Driving will provide seminars on Death Notification. Respective grantees will: (1) Update the existing training package to produce comprehensive and user-friendly instructor and participant training manuals; (2) develop a plan for recruiting ''strategically placed'' individuals and supporting their attendance through scholarships at a training seminar; (3) produce a plan and instruments for assessing the impact of the training; (4) conduct train the trainer seminars; and (5) prepare a final report that presents the project assessment and makes recommendations for further improvements or training.

Since the focus of the project is to integrate the training information into policies and procedures, the recruitment

process is crucial to the project's success. Grantees should therefore present a plan to attract certified trainers or individuals who are strategically located within a national, State, or local training academy or other system. Participating trainees must commit to disseminating the information through in-service training in their organizations, at State or local training academies, or via other means that channel the information to allied professionals in community, State, or national arenas.

5. TRIAD/Elder Abuse ($50,000 in FY96 and $200,000 in FY97)—Non-Competitive

In 1994, OVC entered into a partnership with BJA and the Administration on Aging at the Department of Health and Human Services to support regional TRIAD conferences. These training conferences have stimulated the growth of over 260 TRIAD programs in 44 States around the country. TRIAD is a joint effort of the American Association of Retired Persons, International Association of Chiefs of Police, and National Sheriffs' Association to build a coordinated service response to elderly crime victims. This successful training will be continued in FY96 and FY97.

6. Reproduction and Distribution of Training Materials for Federal Personnel ($80,000)—Non-Competitive

OVC will set aside funding for the reproduction and dissemination of various training manuals and informational materials, including monographs, videos, and the Attorney General Guidelines for Victim and Witness Assistance.

7. Automated Victim Assistance Case-Tracking/Notification System ($100,000)—Non-Competitive

OVC will support the development, testing, and use of a specialized computer program that tracks victim, defendant, case, and service agency information. The system would be designed to: send victims timely notification of case proceedings and dispositions; provide victim service referrals; generate victim-related statistics; and ensure compliance with the Attorney General Guidelines for Victim and Witness Assistance. OVC will reimburse the Executive Office of U.S. Attorneys for expenses incurred by their Management Information Systems and/or by U.S. Attorneys' Offices.

B. Competitive Programs

1. Action Partnerships With Professional Organizations ($120,000 in FY97—Amounts up to $15,000 per Grant Will Be Awarded Depending on the Activities Pursued by Applicant Organizations)

OVC seeks to join with national professional and membership organizations to support projects that provide information and training to their membership for the purpose of improving their response to crime victims. OVC is seeking proposals that specify techniques by which applicant organizations will disseminate the information to their membership and encourage its understanding, use, and integration into the daily practice of those who work with crime victims. Organizations of medical, mental health, legal, and criminal justice personnel, as well as the clergy and other allied professionals, are invited to propose one or more of the following activities: (1) Training tracks or a series of workshops at national conferences; (2) and sharing information through periodicals, special monographs or descriptions of model practices, ''codes of ethics,'' membership mailings, teleconferences, videotapes, new communication technologies, and other avenues for reaching the range of professionals who assist crime victims. OVC is particularly interested in projects that result not only in information dissemination but in increased interaction between the membership of two or more groups. This project is a new component of OVC's Training and Technical Assistance Center.

2. Resource Materials for Victim Organizations ($125,000)

This project will support the development of a training and resource kit designed to strengthen community-based statewide and national victim organizations, coalitions, and support groups. Family members of homicide victims and survivors of other violent crimes often turn to self-help organizations for critical and long-term support services, including peer support, criminal justice advocacy, and referrals. Self-help groups, typically staffed primarily or even solely by volunteers—many of whom are survivors—have continual and pressing needs for training and technical assistance on a variety of topics.

The resource kit will be used to provide training and technical assistance that strengthens community-based statewide and national victim assistance organizations, coalitions, and support groups. The kit will cover such topics as: advocacy within the criminal and juvenile justice systems; working in the legislative, political, and media arenas; fund-raising and management techniques for volunteer organizations; strategies for networking; ways to strengthen organizational structure; techniques for leadership and board development; and outreach to underserved and minority populations. The grantee will identify an advisory committee of representatives of the major support groups for family members of homicide victims and survivors of other violent crimes, who will help shape the contents of the kit. The materials will be pilot-tested in several different settings. After they have been revised, they will be printed and disseminated to groups nationwide. OVC anticipates funding a second phase of this project which will provide funding to several support groups to use the training and resource kit with paid and volunteer staff members.

3. OVC ''Help'' Series ($30,000 in FY97)

OVC will fund the development of a packet of crime-specific brochures that succinctly capture the best known information on a variety of crime-related topics and identify national resources and 800 numbers. The packet will complement the OVC Resource Center display; accompany responses to victims' letters, as appropriate; and serve as general public awareness material. Individual brochures will address the topics of sexual assault, domestic violence, stalking, drunk driving, and child abuse, with an edition specially tailored for children (ages 6–11 and 12–16 years).

C. Non-Competitive Projects

1. Regional Seminars for Establishing Community and Institutional Crisis Response Teams ($100,000 in FY97)

OVC will provide continuation funding to organize, conduct, and assess a series of three regional training seminars on establishing community and institutional crisis response teams. The regional training will assist participants in preparing a community or institutional crisis response plan that is flexible enough to appropriately address many possible crime-related crises. The plan must address both chronic crises, such as multiple victimizations on one college campus, and acute crises, such as hostage situations. The training also will assist in identifying key professionals to serve on the crisis response team.

2. Victim Assistance Training Strategies ($25,000)

As presented in 1995, the National Victim Assistance Academy consisted of a one week (40 hour), intensive block of training provided to approximately 40 victim service providers. In an effort to ensure that OVC is pursuing the most effective approach to building a training academy, this project will assess the basic elements of an effective academy, including: relevant target population, training practices and methodologies, technological pathways, and the relation of the academy to existing or potential State and national accreditation processes for victim service personnel. Options in all of these areas will be examined, as well as their respective cost implications. With input from OVC on the office's current training priorities and issues related to content, training sites, and number of participants, a recommendation report will be produced that can guide the process of building a multi-faceted Victim Assistance Academy that will enhance the quality of victim services in future years.

3. Resources for National Crime Victims Rights Week, 1997 ($30,000)

Each year since 1982, National Crime Victims Rights Week (NCVRW) has been formally designated and commemorated at the Federal level during the month of April. NCVRW provides the nation the opportunity to acknowledge the plight of crime victims and to recognize the numerous reforms that have been instituted to advance their rights and respond to their unique needs. This project will support collaborative efforts between OVC and victim service organizations to make materials available to victims service providers, advocates, elected leaders, and the general public to assist in the commemoration of the national event.

4. Children's Advocacy Center Mentoring Program ($50,000)

Children's Advocacy Centers (CAC) are assisting communities across the country in improving the handling of child victim cases by creating special child-friendly environments, adjusting criminal justice procedures to the needs and abilities of children, and adopting multi-disciplinary approaches. In FY95, OVC joined with OJJDP and the National Children's Advocacy Network to produce a video illustrating ''best medical practices'' for medical examinations; to conduct a conference to facilitate shared resources between CACs and family violence programs; and to support a specialized training track on family violence at the National Symposium on Child Sexual Abuse. In FY96, OVC will continue this joint effort with OJJDP by supporting a mentoring program that enables communities to connect with existing CACs and receive ongoing assistance in establishing or improving CACs or multi-disciplinary teams in their own communities.

5. Battered Women's Justice Project ($90,000)

In FY95, OVC funded the Battered Women's Justice Project to analyze the Full-Faith and Credit provisions of the Violence Against Women Act and provide: (1) An in-depth State-by-State analysis of enforcement efforts; and (2) training and technical support for State and Federal prosecutors to implement these provisions. OVC is working closely with the Violence Against Women Office and the Violence Against Women Grants Office on this program and plans to continue this jointly funded effort in FY96.

6. Domestic Violence In Kentucky: Model Law Enforcement Response ($20,000)

OVC has worked closely with the Community Oriented Policing Services Office (COPS) and the Violence Against Women Grants Office to establish a demonstration program in Kentucky to implement the Full-Faith and Credit provisions of the Violence Against Women Act. This program is both an intra-state and inter-state enforcement effort.

7. Office of Legal Education Victim Rights and Legal Issues Instructor ($100,000)

OVC will support an attorney instructor who will draft litigation series chapters and course material and present classroom instruction on Federal victims' rights legislation, case law and policy, and prosecutors' duties and responsibilities to Federal crime victims. OVC will make funding available through an interagency agreement with the Executive Office of U.S. Attorneys.

8. Federal Prosecutor and Victim-Witness Coordinator Travel ($200,000)

OVC will provide funding to allow victim-witness coordinators and prosecutors from U.S. Attorneys' Offices to attend various training conferences. These funds, to be made available through an interagency agreement with the Executive Office of U.S. Attorneys, will cover travel-related expenses.

9. Federal Law Enforcement Training Center ($125,000)

OVC will continue to support victim assistance training to law enforcement officers from over 70 Federal agencies. This agreement will provide funding for a trainer to present both basic and advanced courses at the Federal Law Enforcement Training Center.

10. FBI Agreement ($273,000)

Through an interagency agreement with the FBI, OVC will support skill development training of Victim-Witness Coordinators at the investigative level. The agreement will provide for training for FBI Victim-Witness Coordinators and fund a full-time trainer at the FBI Academy.

11. Federal Interagency Agreements ($100,000)

OVC will make funding available to various Federal agencies to enhance their capacities for responding to victim and witness needs. OVC will use funds to support requests for training or production and distribution of informational materials.

12. Federal Travel ($130,000)

OVC will provide funding to allow non-U.S. Attorney Federal criminal justice personnel to both attend and train at OVC-sponsored training sessions.

13. Developing and Marketing of Products ($50,000 in FY96 and $110,000 in FY97)

OVC is developing a minimum of 35 monographs and publications to disseminate descriptions of promising practices, that is, innovative and outstanding service strategies and programs that address the needs of crime victims. In addition, OVC will update the civil legal remedies bulletin, which informs victims of ways to pursue recovery and justice through civil procedures. The updated version will address current State laws and improved procedures and practices. Other products that will be reproduced and disseminated include the National Bias Crimes Training Guides, elder abuse training materials, and a guidebook for communities on responding to sexual abuse.

IV. VOCA Enhancements

A. Non-Competitive Programs

1. National Technical Assistance Conference for State VOCA Victim Compensation and Victim Assistance Administrators ($100,000)

In FY96, OVC will provide funding to expand and enhance its support of

national-scope training and technical assistance for State VOCA victim compensation and assistance administrators. Grant awards will be made to the National Organization for Victim Assistance (NOVA) and the National Association of Crime Victim Compensation Boards (NACVCB) jointly to plan and conduct a national training and technical assistance meeting. The meeting will bring VOCA victim compensation and assistance administrators together to receive guidance and technical assistance to advance their administration of the Federal VOCA grant programs. The grantees will work together to develop the conference agenda, identify presenters, and manage other conference activities. A major purpose of the grant is to foster ongoing collaboration and coordination among compensation and assistance programs. Compensation and assistance administrators throughout the country will be consulted by the grantees concerning conference dates, presenters, and agenda.

2. Mentor Program for State VOCA Victim Compensation and Assistance Programs ($50,000)

OVC will continue support for a newly established mentoring program to provide for on-site, expert assistance for State VOCA victim compensation and assistance programs. Participating ''mentors'' are drawn from a pool of VOCA administrators who have demonstrated proficiency in a range of program management and operational areas. Technical assistance is customized to meet the specific needs of VOCA victim compensation and assistance administrators. OVC will make $50,000 available to continue in this effort. Approved on-site assistance will be short-term, generally lasting between one and three days.

B. Competitive Program

1. Regional Technical Assistance Meetings for State VOCA Administrators ($25,000 in FY97)

In FY97, OVC will continue to support regional training and technical assistance meetings for State VOCA compensation and assistance administrators. The purpose of this initiative is to fund a number of regional State VOCA administrators' meetings to address training and information needs. These meetings may focus exclusively on victim assistance or victim compensation, or on a combination of the two. Federal funds will be used to support coordination, materials, meeting space, consultants, and other costs associated with planning, delivering, and assessing each meeting.

V. Victim Assistance in Indian Country

A. Comprehensive Initiatives

1. Victim Assistance in Indian Country Promising Practices ($25,000)—Non-Competitive

OVC will provide funding to the National Institute of Justice to assess the efficacy of VAIC programs.

B. Competitive Programs

1. Children's Advocacy Centers in Indian Country ($50,000)

OVC will provide funding to assist two tribes in establishing Children's Advocacy Centers to serve as demonstration sites. In creating child-focused, multi-disciplinary settings, the centers will allow for a coordinated strategy to meet the needs of child victims and the criminal justice system. OVC will make funding available through OJJDP under a cooperative agreement with regional Children's Advocacy Centers.

2. Topic-Specific Monographs ($75,000)

OVC will make funds available for the development of bulletins, fact sheets, and monographs on issues relevant to Native American child victims. Topics will include jurisdictional issues, child interviewing techniques, reporting procedures, child protection teams, psychological evaluations, cultural sensitivity, and tribal-Federal coordination.

C. Non-Competitive Programs

1. Victim Assistance in Indian Country ($767,000)

OVC will make funding available to 18 States to support on-reservation victim assistance programs in Indian country. OVC currently funds 32 such programs, enabling tribal communities under Federal jurisdiction to establish domestic violence shelters, crisis counseling programs, court advocacy networks, and other victim services.

2. Children's Justice Act Discretionary Grant Program for Native Americans ($717,000)

OVC will provide third year funding to continue projects designed to improve the investigation and prosecution of child physical and sexual abuse cases in tribal communities. The programs have helped to establish special tribal child abuse prosecution units, develop interdisciplinary child abuse protocols, revise tribal legal codes, sponsor training, and support a variety of other initiatives designed to aid in the handling of child abuse cases.

3. Training and Technical Assistance for Children's Justice Act Grantees ($200,000)

OVC will award continued funding to the National Indian Justice Center (NIJC) to provide training and technical assistance to tribes and tribal organizations in improving the handling of child physical and sexual abuse cases. NIJC will assess the needs of new Children's Justice Act grantees; develop plans to meet those needs; provide on-site and telephonic technical assistance to both new and continuation grantees; and produce a monograph which describes promising practices that have been implemented to assist child victims in Indian Country.

4. Tribal Court Appointed Special Advocate Programs ($50,000)

OVC will support the continuation of Court Appointed Special Advocate (CASA) programs in Indian Country. The programs will enable tribal court systems to assign advocates to represent the best interests of Native American children. Funding will be made available through OJJDP under a cooperative agreement with the National CASA Association.

5. Attorney General's Indian Country Justice Initiative ($273,000)

OVC will make funding available to support the Attorney General's Indian Country Justice Initiative at the Pueblo of Laguna in New Mexico and the Northern Cheyenne Tribe in Montana. This interagency initiative, which funds comprehensive services for two Indian tribes, is a collaborative effort between the Administrative Office of the U.S. Courts, the Department of the Interior, and various DOJ components, including the Criminal Division, the Office of Tribal Justice, the Office of Policy Development, and OVC, as well as other OJP bureaus. OVC will support Children's Justice Act and CASA projects, as well as victim-witness programs, at each site. OVC will work closely with the DOJ Criminal Division to implement these projects.

6. Tribal and Federal Judges Training ($50,000)

Through an interagency agreement with the Federal Judicial Center and DOJ's Office of Policy Development, OVC will support a program to educate tribal and Federal judges on the handling of child sexual abuse cases in Indian country. The program will provide legal education on Federal procedural law involving the Federal

Rules of Evidence, the Federal Rules of Criminal Procedures, and the Major Crimes Act; issues of prosecutorial discretion; and relevant tribal law regarding child sexual abuse. Funding also will support the development of a program manual for tribal and Federal judges.

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May 9, 1996

Part IV

Department of Transportation

Maritime Administration

46 CFR Part 298

Obligation Guarantees—Program Administration; Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. R–154]

RIN 2133–AB14

Obligation Guarantees—Program Administration

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (''MARAD'') is issuing this final rule which amends certain provisions of the existing regulations implementing Title XI of the Merchant Marine Act, 1936, as amended (''Act''). This rule is intended to improve administration of the Title XI program. MARAD administers financial assistance under Title XI of the Act in the form of obligation guarantees for all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. The part of the Title XI program related to fishing vessels is administered by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, (''NOAA''), pursuant to NOAA regulations, which appear at 50 CFR part 253.

EFFECTIVE DATE: This final rule is effective on May 9, 1996.

FOR FURTHER INFORMATION CONTACT: David A. Lippold, Senior Financial Analyst, Division of Capital Assets Management, Office of Ship Financing, Maritime Administration, Room 8122, 400 Seventh Street SW., Washington, DC 20590. Telephone 202–366–1907.

SUPPLEMENTARY INFORMATION: Title XI of the Act, 46 App. U.S.C. 1271 *et seq.*, authorizes the Secretary of Transportation (''Secretary'') to provide guarantees of debt (''obligation guarantees'') issued for the purpose of financing or refinancing the construction, reconstruction or reconditioning of vessels in United States shipyards for U.S. citizen owners. Applications for obligation guarantees are made to MARAD acting under authority delegated by the Secretary to the Maritime Administrator (''Administrator''). Prior to execution of a guarantee, MARAD must, among other things, make a determination of economic soundness of the project, and the financial and operating capability of the applicant. Prior to amendment by Public Law 103–160, guarantees could be issued only for debt issued by United States citizens. The Title XI program enables applicants to obtain long-term financing on terms and conditions and at interest rates comparable to those available to large financially sound corporations. Funds secured by the obligation guarantees are borrowed in the private sector.

Background

On November 30, 1993, the ''National Defense Authorization Act for Fiscal Year 1994'' (''Authorization Act''), Pub. L. 103–160, was enacted. Subtitle D of Title XIII of the Authorization Act, cited as the ''National Shipbuilding and Shipyard Conversion Act of 1993'' (''Shipbuilding Act''), expanded the Title XI program by authorizing the Secretary to guarantee obligations issued to finance the construction, reconstruction, or reconditioning of eligible export vessels and for shipyard modernization and improvement. The Shipbuilding Act establishes ''a National Shipbuilding Initiative (NSI) program to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient internationally competitive industry.''

On March 31, 1994, MARAD published in the Federal Register an interim final rule, effective on publication, which amended its regulations implementing Title XI in order to carry out the provisions of Subtitle D of Public Law 103–160, expanding the authorization for obligation guarantees to finance the construction, reconstruction, and reconditioning of eligible export vessels and shipyard modernization and improvement. A final rule was published on September 16, 1994. The final rule stated that MARAD would publish at a later date a separate notice of proposed rulemaking to improve administration of the entire Title XI program.

MARAD initiated a review of the administration of its Title XI program regulations with the objective of implementing President Clinton's ongoing Regulatory Reform Initiative and to reaffirm and implement the principles of Executive Order 12866—Regulatory Planning and Review (September 30, 1993). This rulemaking significantly shortens the time for processing applications for guarantees and reduces the economic burden on applicants in complying with MARAD requirements for the submission of information. Accordingly, it is expected to encourage the construction, reconstruction and/or reconditioning of vessels in United States shipyards and the modernization and improvement of general shipyard facilities located in the United States.

NPRM

MARAD published a notice of proposed rulemaking (NPRM) on April 26, 1995, in the Federal Register (60 FR 20592) and is now issuing this final rule concerning program administration. This rule reflects consideration of all comments received in response to the NPRM and the interim final rule. Consideration has been given in the final rule to all concerns addressed relative to the Title XI program.

In the interim final rule issued to implement the expanded authorization in Public Law 103–160 for issuing Obligation Guarantees, MARAD requested and received public comments on two additional issues, applicable to the entire Title XI program, namely: (1) The issuance by the Secretary of a Letter of Interest prior to an applicant's submission of a complete application and the subsequent issuance, if any, of a Letter Commitment, and (2) the establishment of a deadline, such as 60 days, by which the Secretary would act on a Title XI application considered complete by the Secretary. In the final rule of September 16, 1994, MARAD determined that these two issues would be addressed in the subsequent NPRM concerning program administration because they apply to both the export and domestic programs. The reason is that this would allow MARAD to consider the issues for both the domestic and export programs at the same time. MARAD advised that commenters need not resubmit their views on Letters of Interest and the 60 day processing period in response to the new NPRM. The discussion of the rulemaking text below differentiates between comments received in response to the interim final rule and the NPRM on these two specific areas.

These regulations do not require more extensive paperwork or reporting requirements than exist under the present Title XI regulations. Exemptions provided herein should substantially lessen the aggregate reporting burden.

In order to alleviate a potential source of confusion in the discussion of the regulations by section, when one particular section pertains to more than one issue, the discussion and MARAD's subsequent response is divided into individual issues related to the content of that section.

Discussion of Rulemaking Text

The discussion that follows summarizes the comments submitted to MARAD by 23 commenters on the NPRM and the commenters on the

interim final rule, notes where changes have been made to the Title XI regulations and the rationale therefor, and, where relevant, states why particular recommendations/suggestions have not been adopted. It is noted that where the first letter of one or more words is capitalized, that term is defined in § 298.2. In addition to soliciting comments on specific amendments to the Title XI regulations proposed in the NPRM, MARAD solicited industry and other public comments on three additional issues in general. The first issue is the retention in § 298.13 of the waiver requirement for foreign components and services to be included in Actual Cost. MARAD expressed concern about the potential adverse effect of eliminating the waiver requirement on the U.S. supplier base, which MARAD recognizes as critical to the national defense and economy. MARAD stated that it is attempting to create an environment where both the shipbuilding and ship supply industries have the opportunity to be competitive based on fair pricing, quality, and timeliness. All comments received in this area are in the discussion of § 298.13.

The second issue on which MARAD solicited public comments is construction period financing. As the Secretary may approve Guarantees with respect to obligations to be issued for the applicable period of construction, reconstruction, or reconditioning, MARAD invited comments on available forms of security, in addition to surety bonds, that could protect MARAD's interests as a lender, how progress should be monitored, what new procedures/methodologies should be developed to improve the previously utilized progress payment system, and if payment of interest on the obligations should be made on a more frequent basis (i.e., weekly, monthly or quarterly) than that outlined in § 298.22, *Amortization of Obligations*. In addition, comments were solicited as to how the Title XI applicant will verify/certify to MARAD that certain costs have been paid prior to disbursement of Title XI funds from the escrow account, for example, the use of an agent on MARAD's behalf to verify that certain costs have been paid. All comments received in this area are discussed in § 298.21 below.

Finally, MARAD also requested comments concerning the standard application Form MA–163 referenced in § 298.3, *Applications*, and the required documentation outlined in subpart D of this part 298. All comments received in these areas are discussed under § 298.3 or subpart D of this part.

Discussion of Regulations by Section.

Note: Paragraph references are as designated or redesignated in the notice of proposed rulemaking.

Section 298.2 Definitions

(b), Actual Cost. One commenter suggested the inclusion of Guarantee Fees as an item in the definition of Actual Cost.

MARAD Response: The present definition of ''Actual Cost'' refers to § 298.21(b) which is being amended in the final rule to clearly state that ''Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act shall be included in the items of Actual Cost.'' Hence, adoption of the NPRM as a final rule will effectively accomplish the commenter's suggestion without the necessity to change the definition of Actual Cost.

(f), Depreciated Actual Cost. One commenter suggested the inclusion of Guarantee Fees as an item in the definition of Depreciated Actual Cost.

MARAD Response: The same response as to the preceding comment applies.

(l) Guarantee Fee. One commenter suggested deletion of the reference to interest accrual on the Guarantee Fee.

MARAD Response: The definition of ''Guarantee Fee'' does not include a reference to interest accrual and, therefore, is not being amended.

(o) Letter of Interest. While no commenter suggested a change to the proposed definition of a Letter of Interest, comments were received regarding the Letter of Interest concept and content.

MARAD Response: MARAD's response to the comments are outlined below in the discussion regarding § 298.3(f). In view of the fact that MARAD is deleting § 298.3(f) in its entirety, this definition will not be included in the Title XI regulations.

(y) Related Party. One commenter suggested that the definition of Related Party should be revised to be consistent with the existing definition in generally accepted accounting principles (GAAP).

MARAD Response: The intent behind replacing the terms ''Affiliate'' and ''Affiliated'' with the term ''Related Party'' was to be consistent with a terminology change in GAAP as promulgated by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants. Although the commenter has provided the present GAAP definition for Related Party, MARAD has determined that it would be inappropriate to incorporate the precise GAAP definition as it exists today in the Title XI regulations due to the frequent modifications to GAAP definitions. It should be noted, however, that MARAD's regulations are to be construed in a manner consistent with GAAP, unless the regulations expressly deviate from GAAP.

(cc) Vessel. The definition of Vessel was not modified in the NPRM. However, three of the four commenters supported MARAD's announcement of a change in policy to expressly include passenger vessels engaged in commercial common carriage, in particular ferries, as eligible for the Title XI program. One commenter also was in favor of an expansion of Title XI financing to the ''cruise to nowhere'' segment and gaming vessels, as the commenter believes that the passenger vessel segment of the U.S. flag merchant marine will make the most gains in the next decade. One commenter does not believe that the change in policy on passenger vessels should include ferries and/or gambling vessels on U.S. rivers because use of scarce Title XI resources for these vessels would not promote the Act's objective of ocean-going vessels or vessels capable of serving as a military auxiliary.

MARAD Response: MARAD does not believe that a regulatory change to this definition is necessary. It is MARAD's position that the expansion of Title XI financing in the passenger vessel market generally will aid in the development and maintenance of an adequate and well-balanced U.S. merchant marine and will promote U.S. commerce. As to the concern expressed about MARAD's scarce Title XI resources, MARAD retains informal discretion under the Act and formal discretion under § 298.3(e) (priorities), in appropriate circumstances, to limit allocation of its Title XI resources to ensure optimal use of MARAD's appropriated funds in terms of promoting the objectives of the Act.

Section 298.3 Applications

Section 298.3 (a). This section specifies the format for submitting and amending applications for Title XI financing. As mentioned above, MARAD specifically solicited comments on the current standard application Form MA 163 and any proposed amendments to the form and standard documentation, particularly with regard to export vessels and shipyard modernization.

One commenter stated that inadequate time was given to review and comment on the application form; however, as a general comment, the form needs to be revised to be consistent with the recent changes in law for

shipyard modernization and Eligible Export Vessels. Another commenter stated that the application form is overly complicated and greatly increases transaction costs and discourages applicants. The commenter suggested the establishment of an advisory committee composed of representatives from MARAD, the maritime bar, investment and commercial banking industry, shipbuilding industry and the shipowning and operating industry to review and assist in revisions.

A final commenter believes that the administration of the program will be improved by including a list of all documents required to be submitted with an application, i.e., any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements (§ 298.3) and legal opinions ensuring the enforceability of the mortgage or security interest for Eligible Export Vessels (§ 298.31(a) (2) and (3)).

MARAD Response: In view of the time required to determine appropriate changes and to obtain approval from the Office of Management and Budget for a revised form, MARAD has decided to defer consideration of this matter in order to avoid delay in promulgating this rule. MARAD supports the suggestion that a non-Governmental authority establish a working group composed of representatives from MARAD, the maritime bar, investment and commercial banking industry, shipbuilding industry and the shipowning and operating industry to review and assist in revisions to the form.

MARAD agrees with the comment that the administration of the Title XI program will be improved by including with the application form a list of all documents required to be submitted with the application. MARAD will prepare such a list of documents, which list shall be provided with the standard application form.

In addition, MARAD has determined that the document required to be filed with the Secretary of the Senate and the Clerk of the House of Representatives by the Lobbying Disclosure Act of 1995, Pub. L. 104–65, must be filed as part of a formal Title XI application, together with the declaration required to be filed by 31 U.S.C. 1352. MARAD will still require similar forms at Closing. Finally, as part of the application process MARAD may request that the applicant submit information to assist MARAD in the preparation of a National Environmental Policy Act analysis.

The instructions regarding the filing of a Title XI application on Form MA–163 require that 12 complete sets (of which three must be duly executed and certified by the applicant), including schedules and exhibits as required, must be filed with MARAD. MARAD has reviewed its internal requirements for processing applications and has reduced the required number of application sets to ten. Only two of the sets must be duly executed and certified by the applicant. In addition, MARAD has examined the possibility of allowing Title XI applicants to submit their Title XI applications on computer disk to be accompanied by two hard sets of the application duly executed and certified by the applicant. Upon request a list of the computer software which can be utilized for disk submission of the application will be made available by the Office of Ship Financing.

Section 298.3(b)(1). In response to the 1994 interim final rule, most commenters thought that the 60-day processing period for completed applications was reasonable, appropriate, and adequate. Some commenters suggested a shorter period of 30 days as conforming more closely to purported international commercial norms. Some shipyards were concerned that the 60-day turnaround is noncompetitive in the international market because a ''complete'' application may in itself take more than 60 days to draft. They suggested that guidelines would be necessary to define the procedures for submitting a complete application. Some suggested that, for a pre-approved ship design, MARAD should be able to issue Letter Commitments within 30 days, and further suggested that MARAD review its application requirements to ensure that it is not requiring burdensome information. One commenter suggested that a deadline for processing completed applications is an unnecessary requirement.

The April 1995 NPRM reiterated the 60 day guideline and also proposed a 15-day deadline, after notification by MARAD, by which an applicant must correct deficiencies in the application or face possible termination of the application. In response to the NPRM, most commenters supported MARAD's efforts to shorten the time for processing guarantee applications. Several commenters suggested that to be world competitive, a 60-day turnaround, from when the application is submitted to the Closing, is necessary. Some commenters were concerned about the proposed reduced amount of time the applicant has to correct deficiencies in the application. One stated that placing a 15-day limit on correcting deficiencies would place an undue hardship on the applicant as well as make it impossible to meet the deadline where deficiencies involve engineering or architectural items and, therefore, suggested a minimum of 60 days to correct deficiencies. One commenter noted that the requirement makes no distinction as to the nature, complexity, or availability of the requested information.

Several commenters suggested that termination of an application should occur only when it is the applicant's failure to complete the application that results in inaction and that failure to supply the deficient information should result in suspension of the application process, rather than termination. Several commenters stated that if an application is resubmitted, no new filing fee should be assessed unless the application is for a substantially different project. Finally, one commenter indicated that having to start over will actually result in prejudice to MARAD's consideration of a subsequent application.

MARAD Response: Prior to the issuance of the NPRM, this section indicated that the period between the filing of the application and the anticipated date by which a Letter Commitment is issued was six months and that the period for completing an application and the Secretary taking action on a completed application is within one year. The NPRM proposed significant modifications to the Title XI regulations in this section in order to provide for expeditious processing of each Title XI application, resulting in lower administrative costs and a more timely response to the applicant.

The 60-day processing period for completed applications is a general guideline for processing Title XI applications. If possible, MARAD will process completed Title XI applications on a more expedited basis than 60 days in order to enable applicants to more quickly respond to market opportunities.

As to some shipyard concerns regarding the drafting of a ''complete'' application, the time that it takes to draft a Title XI application is not factored into the 60-day processing period. MARAD is on public record as encouraging Title XI applicants to have at least one pre-application meeting with MARAD personnel to, among other things, determine what essential pieces of information about the applicant and its proposal must be included in the application. As each application is project specific, the information necessary for submitting a complete application for a given project will be discussed at the pre-application meeting(s). If applicants follow MARAD's suggestion to have pre-

application meetings, the application drafting time should be significantly reduced.

The suggestion that MARAD issue a Letter Commitment in the case of pre-approved ship designs within 30 days is rejected because MARAD still has to review the application for economic soundness and review of a company's financial position. In most cases, this could not be completed in the proposed 30-day period. With regard to the suggestion that MARAD review its application requirements to ensure that it is not requiring burdensome information, MARAD is undertaking this review.

Finally, one commenter's suggestion that a deadline for processing completed applications is an unnecessary requirement is rejected because MARAD believes that it is critical to an orderly and expeditious process to have a specific indication as to the period for such process.

Several commenters expressed concerns about the reduced amount of time (from the previous period of nine months) the applicant has to correct deficiencies in the application. In response, MARAD notes that failure by the applicant to correct deficiencies within 15 days does not result in automatic termination of the application. The regulation provides that the *Secretary* may terminate processing of the application without prejudice. MARAD thus has the flexibility to extend the deadline, if appropriate, taking into consideration the nature, complexity, or availability of the requested information.

MARAD does not believe it necessary to amend the language in this paragraph to provide that, in lieu of terminating an application without prejudice, MARAD may elect to suspend processing of an application for any number of contingencies. MARAD may use its discretion to do whatever is appropriate in processing applications.

The position of several commenters that, if an application is terminated, no new filing fee should be assessed unless a subsequent application is for a substantially different project, is justifiable and is being adopted.

In view of the foregoing, MARAD sees no reason to change the present wording of § 298.3(b)(1), with the exception of one item. The paragraph is being amended to clarify that if an application is terminated by MARAD without prejudice, no new filing fee will be assessed for a subsequent application for a similar project that is filed within one year of the termination date. If a subsequent application is for a substantially different project as determined by MARAD on a case-by-case basis a new filing fee will be assessed.

Section 298.3(c). The NPRM proposed requiring each Title XI application to be accompanied by a filing fee in the amount of one quarter of the investigation fee amount, calculated pursuant to the formula outlined in § 298.15, but in no event less than $1,000.

Several commenters do not support raising the $1,000 filing fee, arguing that preparing a Title XI application shows seriousness. Other commenters object to raising the filing fee to the amount proposed in the NPRM, but believe a modest fee increase is appropriate. One commenter believes that a multiple vessel application should not result in a substantially greater fee than a single vessel application of the same type because the amount of analysis involved is not significantly more. Therefore, the commenter believes that the filing fee should be capped at $25,000 to discourage frivolous applications. Another commenter supports capping the filing fee at a maximum of $10,000. A $10,000 non-refundable maximum filing fee will ensure the seriousness of the applicant and provides the government with a substantial and immediate contribution toward the cost of processing the application. At the same time, the commenter states that a $10,000 cap will not result in applicants undertaking substantial economic risk simply to file an application.

One commenter states that the proposed filing fee increase would act as a major disincentive to program participation by portions of the maritime community the program is designed to serve, bearing most heavily on those least able to afford its terms. The increased fee would create a severe disincentive and is not only onerous in the extreme for any large project but also discriminatory against larger projects which tend to bring greater benefits to the country. Such a fee level, in the case of large projects, bears no relationship to a greater cost to MARAD of processing a given application up to the point of approval and receipt of the investigation fee.

Another commenter believes that if the proposed NPRM modifications are adopted, either the Letter of Interest procedure will in effect become the application procedure, with prospective applicants submitting applications complete in all respects (except for signatures and payment of the application fee) or the number of Title XI applications will decline dramatically. The commenter states that MARAD cannot adequately review a Title XI application in a ten-day time frame set out for Letters of Interest, and many applicants, particularly for Eligible Export Vessels, will not pay thousands of dollars to find out if MARAD might approve their application.

MARAD Response: MARAD has reconsidered its proposed amendment and has decided to further amend this paragraph by requiring each Title XI application to be accompanied by a filing fee in the amount of $5,000. Since the filing fee is deducted from the investigation fee, which is paid at the end of the application process, there will be no net increase in cost to the applicant. However, the increase in the initial filing fee will enable the Government to recover more of its administrative costs for application processing at the beginning of the application period. The instructions for filing Form MA–163 will be modified to reflect the increased fee.

Section 298.3(f). In response to the 1994 interim final rule, almost all of the 28 commenters responded favorably to the proposal that the Secretary exercise discretion to issue a Letter of Interest prior to the applicant's submission of a complete application. Commenters noted that the procedure could be particularly useful if the shipbuilder could use the document as a marketing document to compete effectively against foreign yards. Some suggested that if MARAD were also to preapprove ship designs, Letters of Interest would be very effective indicators of MARAD's interest in a proposed financing. One commenter suggested that Letters of Interest could be used by applicants to forecast the cost of a transaction and the expertise that will be needed to complete a proposed transaction.

Commenters proposed that requests for Letters of Interest should contain information about (1) the type and design of the Vessel to be financed and its intended trade, (2) the approximate cost of the Vessel and its proposed builder, (3) the amount of the requested Guarantee, (4) recent financial information on the prospective shipowner or bareboat charterer, (5) a description of the collateral to secure the Secretary's Guarantee, and (6) identification of the country in which the Vessel would be owned and documented. A commenter recommended that there be no charge or fee for the issuance of a Letter of Interest, that the letter be issued prior to the filing of an application, and that the letter be issued within ten days of the request.

Several commenters raised two concerns about Letters of Interest. First,

they argued that requests for such letters must be treated confidentially because a request for a letter may come during the negotiating process and the subject shipyard would not want its competitors to be aware of the negotiations or potential prices. A second concern raised was that the formalization of a Letter of Interest procedure could slow down the expeditious approval by MARAD of loan guarantee applications by effectively duplicating the formal application process. It was suggested by one commenter that MARAD could substitute preapplication meetings for the Letter of Interest. Additional concern was expressed that the conditions contained in the Letter of Interest should not be deemed by the agency to be binding if the applicant later demonstrates that it can meet alternative, but equivalent conditions.

MARAD Response: MARAD noted in its comments above to § 298.2(o) its deletion of the Letter of Interest definition. Initially, MARAD intended its Letters of Interest to parallel those of the Export-Import Bank of the United States. However, MARAD has, with the passage of time, significantly diluted the content of its Letter of Interest to the point where the letter is in the nature of a letter of eligibility. MARAD found it necessary to amend the letters because, in certain instances, they had been held forth to outside institutions as representing some sort of commitment to a project by MARAD. Currently, the letters describe only the general eligibility of a project and advise that, as such, they do not and should not be construed as approval of the project by MARAD or the terms that would be applicable to the project. The letters state that approval of any project would be based on MARAD's determination that the project meets all statutory, regulatory and financial requirements. The letters further state that, although a project may be deemed eligible for Title XI financing, issuance of the letter does not give any assurances that MARAD would be interested in proceeding with, or that funds would be available for, the type of project should an application be filed. Therefore, MARAD believes that to continue to call these letters ''Letters of Interest'' is inaccurate. MARAD will continue to issue letters of eligibility to indicate the general eligibility of a project for Title XI financing. However, it will no longer issue any document referred to as a Letter of Interest. MARAD believes that the letter of eligibility concept does not have to be formalized in the Title XI regulations and, therefore, paragraph (f) is being deleted in its entirety.

MARAD does not agree with the commenters' concern that letters of eligibility be treated on a confidential basis. As a general matter, all letters of eligibility including all formal actions taken by MARAD, including the issuance of a letter of eligibility, must be disclosed to the public. However, if the request for a letter of eligibility, including attachments thereto, contains information which the submitter considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time of filing a letter of eligibility request. The same requirement shall apply to any amendment to the request. The procedures outlined in paragraph (d) of this section shall apply with respect to the assertion and review of FOIA exemption claims. Due to the nature of a request for a letter of eligibility, MARAD does not agree with the comment that the letter of eligibility procedure would slow down the expeditious approval by MARAD of Title XI applications. Finally, MARAD believes to be unfounded the comment that MARAD could substitute pre-application meetings for the letter of eligibility as the two concepts are unrelated. The purpose of a pre-application meeting is to exchange information and the purpose of a letter of eligibility is to identify the general eligibility of a project.

Section 298.10 Citizenship.

This section sets forth the citizenship requirements for Title XI applicants and certain other parties that must establish U.S. citizenship prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act. The exceptions to this requirement are Eligible Export Vessels and General Shipyard Facilities.

Section 298.10(a). MARAD received four comments on this issue. One commenter merely pointed out a typographical mistake. The other three commenters supported the elimination of the citizenship requirement for all Title XI financed U.S.-flag vessels and stated that the only requirement should be the vessel documentation requirements administered by the U.S. Coast Guard. One of the three commenters, with known foreign involvement, is interested in converting semi-submersible drilling rigs into floating production systems (FPS) for use in the oil and gas industry in the Gulf of Mexico area. Therefore, their view is that Title XI financing should be available to ''transnational ship-owning corporations.'' Another commenter supported the elimination of the citizenship requirement because their desire is ''to see that the potential beneficiaries of the Title XI program are as broad as possible * * *'' A comment from a law firm stated that sections 1103(a) and 1104(a)(1) were amended by the Shipbuilding Act to eliminate Section 2 citizenship requirements for Title XI financed U.S.-flag vessels and that MARAD is misreading the U.S. citizenship requirements set forth in the defined term ''vessel'' at section 1101(b). Their view is that the U.S. citizenship requirement in this section is not all inclusive and applies only to certain types of vessels. One of the four commenters also stated that the citizenship of a preferred mortgagee is ''immaterial'' and MARAD should not be concerned with the citizenship of third party mortgagees.

MARAD Response: The U.S. ownership requirement for U.S.-flag vessels financed with Title XI has been consistently required throughout the life of the Title XI program. It was required for the predecessor federal ship mortgage insurance program, 52 Stat. 969 (See H.R. Rep. No. 2168, 75th. Cong., 3d Sess. 29), retained in the Federal Ship Loan Guarantee Program, enacted in 1972, 60 Stat. 909, and left unchanged by enactment of the Shipbuilding Act in which Title XI loan Guarantees were extended to Eligible Export Vessels, which could be owned by either U.S. citizens or non-U.S. citizens, but retained the limiting definition of vessels for non-export purposes. Therefore, by law, U.S.-flag Vessels receiving Title XI financing must be owned by U.S. citizens.

With respect to the comment regarding citizenship of mortgagees, MARAD does not require, under the Title XI financing program, evidence of the mortgagee's U.S. citizenship. MARAD only requires confirmation that the mortgagee complies with the statutory requirements established for mortgagees. Accordingly, MARAD will not amend the regulation.

Section 298.11 Vessel requirements

Section 298.11(a). Concerning paragraph (a), *United States Construction,* one commenter suggested that the structure of creating three separate classes of Vessels is confusing and unnecessary. To the extent a higher standard is required for operation in the coastwise trade, it should be sufficient simply to say that the Vessel shall be built to whatever standard is necessary

to entitle it to be eligible for such trade. There should be no distinction between U.S.-flag and Eligible Export Vessels. The standard for U.S. shipyard involvement for Eligible Export Vessels is the standard which should apply to all Vessels subject to specific trade requirements. The commenter therefore recommends that for all Vessels MARAD adopt the definition in § 298.11(a)(3), which provides that the Vessel is considered to be of U.S. construction if assembled in a United States shipyard. A second commenter states that since the Organization for Economic Cooperation and Development Shipbuilding Agreement recognizes the U.S. right to maintain the Jones Act, it is appropriate for the rule to make a distinction between Jones Act and non-Jones Act Vessels so that any prospective change to the guarantee period will not apply to Jones Act Vessels.

MARAD Response: Upon further review, MARAD agrees with one of the commenters that the creation of three separate categories of Vessels is unnecessary. As the proposed categories were squarely in line with the standards enunciated by the United States Coast Guard, MARAD believes it is appropriate instead to amend paragraph (a) of the regulation to simply state that for U.S.-flag Vessels, the Vessels shall be built to whatever standard is necessary to enable them to be eligible for their specific trade requirement. Accordingly, the regulation is being amended to provide that a Vessel, including an Eligible Export Vessel, financed by an Obligation Guarantee is considered to be of United States construction if the Vessel is assembled in a shipyard geographically located in the United States. In addition, § 298.32(a)(6) is being amended to reflect the above.

Section 298.11(c). Concerning paragraph (c), *Class, condition and operation,* two commenters supported MARAD's proposed amendment regarding Quality Systems Certificate Scheme (QSCS) issued by qualified International Association of Classification

Societies (IACS) members as meeting acceptable standards for such a society to participate in the Eligible Export Vessel program.

MARAD Response: By requiring solely ISO–9000 registration, the current Title XI regulations do not allow members of IACS who are QSCS qualified members that are not ISO–9000 registered to participate in the Title XI Eligible Export Vessel program. Initially, there was a thought that merely agreeing to a QSCS standard would screen out marginally qualified classification societies. However, requiring the ISO–9000 standard would currently screen out the American Bureau of Shipping and other highly qualified classification societies whose inspection and classification activities are recognized worldwide. Paragraph (c) has been amended to permit QSCS qualified IACS members who have been recognized by the United States Coast Guard as meeting acceptable standards for such a society to participate in the Eligible Export Vessel program. That recognition shall include, at a minimum, recognition that the society meets the requirements of IMO Resolution A.739(18).

Section 298.11(e). Concerning paragraph (e), *Metric Usage,* one commenter states that it is not clear what is meant in the regulation by the statement that the ''preferred system'' is the metric system. If some preference is to be given to application of the metric system, the consequences of such preference should be spelled out.

MARAD Response: DOT Order 1020.1D ''Department of Transportation Transition to the Metric System'' established Departmental policy for transition to the metric system in accordance with the Metric Conversion Act of 1975, as amended by Section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418 (Omnibus Act). Section 5164 of the Omnibus Act declares that it is the policy of the United States to designate the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. Section 5164(b)(2) requires each Federal agency to use the metric system of measurement in its procurement, grants, or other business-related activities. Therefore, the Title XI regulations have been amended to indicate that the preferred system of measurement and weights for vessels and advanced and modern shipbuilding technology is the metric system as a matter of policy. However, no preference/priority is given to processing applications where the metric system of weights and measures is utilized. The priorities given to Title XI applications are outlined in § 298.3(e) and select criteria for evaluating Title XI applications is set forth in § 298.17.

Section 298.12 Applicant and Operator's Qualifications

Section 298.12(b)(2). This section outlines identifying information required to be submitted if the applicant is a partnership, joint venture, association, or unincorporated company.

MARAD Response: Although no comments were received regarding the change to this paragraph as outlined in the NPRM, MARAD has decided to add a new paragraph (b)(2)(vi) requiring the submission of information regarding financial, management and/or equity transactions which could have a significant impact on the ability of the applicant to meet the Title XI requirements.

Section 298.12(f)(1). One commenter stated it is unclear which individuals need to be named in this section which requires that the background of ''all senior supervisory personnel'' be submitted. To the extent that advanced shipbuilding technology is the subject of the application, it should be sufficient to submit the background of the people who will be directly responsible for the installation or operation of the facility or method. Additionally, one commenter suggested that the word ''personnel'' should be stricken from the proposed insert—''by all senior supervisory''—because the word ''personnel'' already follows each place that the phrase is inserted.

MARAD Response: MARAD agrees that the word ''personnel'' should be stricken from the proposed amendment to that paragraph. MARAD sees no reason to change the present wording of paragraph (f)(1) regarding the background of all senior supervisory personnel for Advanced Shipbuilding Technology. It is a sufficiently clear standard to apply to particular circumstances.

Section 298.13 Financial Requirements

Section 298.13(a)(2)(i). One issue on which MARAD solicited public comments in the NPRM is the retention in section 298.13 of the waiver requirement for foreign components and services to be included in Actual Cost, which waiver shall not be granted for foreign components of the hull and superstructure. MARAD indicated its concern about the potential adverse effect on the U.S. supplier base, which MARAD recognizes as critical to the national defense and economy. In the NPRM, MARAD stated that it is attempting to create an environment where both the shipbuilding and ship supply industries have the opportunity to be competitive based on fair pricing, quality, and timeliness.

A broad spectrum of comments were received on this issue. Some commenters supported the retention of the current waiver requirement for foreign components and services. One commenter submits that the retention of the waiver provision is the most

prudent path for applicants to follow and outweighs any speculative adverse impact that retention of the waiver might have on the U.S. supplier base. There are instances in which a foreign component or service is necessary for the construction, reconstruction, or conversion of a vessel, and the applicant should not be penalized in such instances. Additionally, the commenter states that removal of the waiver might place a U.S. supplier who competes with foreign suppliers in a position to demand what might amount to monopolistic prices; the supplier who normally competes in the world market would be given dominant market power if the applicant were required to purchase supplies from such a U.S. supplier in order to obtain financing for the cost of such supplies. The commenter states that removal of the waiver provision has the potential to hinder, rather than enhance, the creation of a competitive domestic ship supply industry based on fair pricing, quality and timeliness. In addition, the commenter submits that it should be made clear that, in addition to the hull and superstructure, each additional foreign component or service for which a waiver is not granted, and thus which is not included in Actual Cost, can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements. Finally, that commenter proposes adding the following underscored language to § 298.13(a)(2)(1): ''Although excluded from Actual Cost, foreign components of the hull and superstructure *and other foreign components and foreign services for which a waiver has not been granted* can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements * * *.''

Another commenter states that the term ''component'' should be defined in order to eliminate the possibility that raw materials, such as steel, might be considered to be a component and required to be of U.S. origin. It is important to retain the ability to waive the requirement for U.S. components, MARAD needs the flexibility and it is too hard to predict technological changes that may be beneficial to a vessel that may be obtained only through a foreign source or to compensate for shortages in the U.S. supply of components affecting delivery schedules. Another commenter notes that the regulations are not specific as to what items are to be considered as components of the ''hull and superstructure.''

Other commenters supported the introduction of a more restrictive waiver requirement by recommending that waivers ''ordinarily be granted only where the applicant has demonstrated that the item involved: (a) Is not manufactured by a U.S. domestic source, or if a service, is not available from such a source; (b) is not available from a U.S. domestic source in a timely fashion; or (c) is not available from a U.S. domestic source at a competitive price.'' Along the same line, another commenter states that the regulations need to be amended to provide for standards and procedures for granting waivers, such that applicants will be required to demonstrate in a clear and convincing way that no U.S. product is available and that sufficient and effective steps have been taken to search the U.S. industrial base.

Finally, some commenters opposed the requirement for a foreign component waiver for non-hull and superstructure items. One commenter states that the requirement to seek a waiver for each of a myriad of items would be a crippling obstacle to achieving competitiveness and the NPRM gives no indication as to grounds for a waiver. The commenter states that protection of the U.S. supplier base will not promote competition. Where U.S. suppliers are capable and cost-competitive, the commenter expects U.S. suppliers to be used. However, the commenter supports the requirement that only hull and superstructure components fabricated in the U.S. should be included in Actual Cost and that no waiver should be granted. The commenter does not believe that inclusion of foreign hull and superstructure components should disqualify the entire vessel from Title XI financing and does not see any significant benefit to allowing foreign hull and superstructure components to be included as part of the equity contribution. Finally, the commenter states that it is unclear in the example given in the NPRM how foreign hull and superstructure components will be considered as part of the equity contribution. Nonetheless, the regulations should specifically state that large items of foreign hull and superstructure components excluded from actual cost may be financed externally, such as in a foreign jurisdiction that is willing to provide export financing.

Another commenter opposing the requirement for a foreign component waiver for non-hull and superstructure items states that restrictions on the use and financing of foreign equipment will severely limit U.S. shipyards' ability to become globally competitive. The commenter adds that it is not reasonable to assume that these restrictions will result in the domestic manufacture of items. U.S. yards need to have the same access to the global supplier base as do other yards so that they can obtain the low prices and technologically advanced designs necessary to secure orders. Restricting U.S. shipyards from procuring foreign source machinery, equipment, or hull and superstructure material which has been manufactured in a foreign facility is not the way to make them competitive on the international market.

Another commenter respects MARAD's good faith desire to try to protect U.S. suppliers, but opposes the actual cost disqualification for all foreign components and services. The commenter states that the NPRM's articulated policy goal is contrary to the spirit of GATT, to the policy of the President and the USTR, and to Congressional intent. In order to get export shipbuilding orders, there must be freedom to respond to the commercial dictates of international customers. The commenter adds that U.S. suppliers are done no favors by adopting protectionist principles which can prevent U.S. shipyards from obtaining export orders. The commenter states that a ''Buy America'' program should not be adopted until choice availability and price parity from within the domestic U.S. is fully equal to that internationally available. If the above arguments are rejected, the commenter argues that the hull and superstructure metals components are the only items for which no waiver should be granted.

A final commenter adds that exclusion of foreign components of the hull and superstructure and a waiver for other foreign components or services is redundant in the case of coastwise-eligible U.S.-flag Vessels since other U.S. laws require that such Vessels be built in the United States (which term includes fabrication of all *major* components of the hull and superstructure in the U.S.). The commenter states that the regulations omit the word *major* thereby arguably setting up an even higher standard than that required to document Vessels under the U.S. flag for coastwise trade. The commenter recommends that MARAD limit its requirements under Title XI in the case of non-coastwise U.S.-flag Vessels and foreign-flag Vessels to assembly in a shipyard in the United States. The commenter states that MARAD should encourage U.S. shipyards to compete internationally and not limit its own program in a way that makes it less attractive than competing programs being offered by foreign countries. In addition, the commenter states that the waiver

requirement is totally unwarranted in light of earlier removal of the ''Buy America'' requirements. Placing additional requirements of this type is the kind of unnecessary government regulation that the Administration promised to eliminate in its October 1993 shipbuilding initiative report.

MARAD Response: MARAD reiterates its concern about the potential adverse effect on the U.S. supplier base of elimination of the waiver requirement for foreign components and services to be included in the Actual Cost determination. MARAD is attempting to create an environment where both the shipbuilding and ship supply industries have the opportunity to be competitive based on fair pricing, quality and timeliness. In view of the foregoing comments, MARAD has decided to retain the waiver requirement and to establish a standard for granting a waiver. The standard would be the certification by the applicant, to be reviewed by MARAD, that a foreign item or service is not available in the U.S. on a timely or price-competitive basis, or is not of sufficient quality. Paragraph (a)(2)(i) is being modified accordingly.

In addition, MARAD agrees with one of the commenters that the omission of the word ''*major*'' from defining the components of the hull and superstructure which must be fabricated in the U.S. establishes a higher standard than that required to document vessels under the U.S. flag for coastwise trade. Accordingly, the appropriate clarification is being made to paragraph (a)(2)(i).

Section 298.13(a)(4). One commenter states that provision should be made to accept financial information provided in the normal accounting system used by the applicant, provided that it is an accepted accounting system in the applicant's country of origin and further, provided that the applicant submits some reconciliation of the major differences between the accounting system employed and GAAP. The commenter adds that the Securities and Exchange Commission accepts this approach. One other commenter recommends that if U.S. GAAP is to be required of all applicants or other entities significantly involved with the financing, that requirement should be reflected in the regulations.

MARAD Response: MARAD recognizes that a requirement to meet U.S. generally accepted accounting standards may be unduly burdensome in the case of Eligible Export Vessels. Accordingly, in the interim final rule published in the Federal Register on March 31, 1994, MARAD amended § 298.42 of the Title XI regulations to provide that, in the case of such vessels, the company accounts shall be audited at least annually and the Secretary *may* require that the financial statements be in accordance with generally accepted accounting principles by accountants, as otherwise described in § 298.42, or certified by independent public accountants licensed to practice by the regulatory authority or other political subdivision of a foreign country, provided such accountants are satisfactory to the Secretary. In order to be consistent with § 298.42, MARAD agrees that provision should be made for MARAD to accept financial information from Eligible Export Vessel applicants provided in the normal accounting system used by the applicant, provided that it is an accepted accounting system in the applicant's country of origin and, further, provided that the applicant provides a reconciliation of the major differences between the accounting system employed and GAAP. This approach would parallel that accepted by the Securities and Exchange Commission. MARAD has added new language to this paragraph to accommodate the commenter's concerns and to make this paragraph consistent with § 298.42.

Section 298.13(b). This paragraph sets forth financial definitions for §§ 298.13, 298.35 and 298.42 of the Title XI regulations. One commenter is confused as to how the NPRM amended this section to be consistent with 46 CFR part 232, as no proposed amendments to part 232 could be found. The commenter added that, for the definitions of working capital, equity and long-term debt, the NPRM deleted references to GAAP, which revisions are not supported by the commenter.

MARAD Response: The commenter appears to have misinterpreted the proposed amendment to this section of the Title XI regulations. The NPRM amended certain paragraphs of this section to make them consistent with 46 CFR § 232, which was most recently amended by MARAD with the publication of a notice in the Federal Register on December 9, 1993. There is no indication in the discussion section of the NPRM that amendments to part 232 were also being proposed, which is the reason the commenter could not find any proposed amendments to part 232.

With regard to the commenter's statement that the NPRM deleted references to GAAP in the definitions of working capital, equity and long-term debt, it is important to note that 46 CFR § 232.2(a), which is separate from the Title XI regulations, requires that all contractors shall conform their accounting policies to GAAP (promulgated by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants). Although the NPRM deletes references to GAAP in these Title XI regulations, working capital, equity and long-term debt definitions must conform to GAAP as such terms are defined in 46 CFR 232.2(a). Hence, MARAD sees no reason to change the present wording of paragraph (b).

Sections 298.13 (d) and (e). These sections outline the primary and special requirements required at the Closing. Comments were received from only one commenter on these paragraphs. The commenter states that the maximum debt to equity rate of 2:1 is unrealistic and should be revised upwards. The commenter considers the ratio unrealistic because a company could have a large asset requisition and yet still be strong enough to pay back its loan. Furthermore, since banks allow a ratio of 3:1 in certain cases, MARAD regulations are more burdensome. In addition, the commenter states that the working capital ratio is obsolete and should be replaced by a cash flow ratio for asset-based companies. A minimum ratio of 1.25:1 is recommended by the commenter in keeping with current banking requirements.

MARAD Response: MARAD does not agree that a debt to equity ratio of 2:1 and a positive working capital ratio are either unrealistic or obsolete standards, and is not amending these requirements. However, MARAD recognizes that these standards may not be appropriate in certain cases and does not apply them in every case. Financial requirements are determined on a case-by-case basis and are dependent upon numerous financial and economic factors. Pursuant to paragraph (h) of this section, the Secretary may waive or modify the financial terms or requirements otherwise applicable under this section, upon determining that there is adequate security for the Guarantees. Should an applicant have sufficient financial resources to justify a different ratio, the Secretary already has the authority to modify the financial requirements.

Section 298.14 Economic Soundness

Section 298.14. One commenter stated that in evaluating the income stream for a one vessel project, MARAD should consider the assets of the entire company which back up the loan, including other vessels' income. In addition, loans should provide for repayment without the imposition of pre-payment penalties kicking in.

MARAD Response: Paragraph (a)(1)(iii) of this section states that in making a finding of economic soundness MARAD shall consider all relevant factors, including, but not limited to, the projected revenues and expenses associated with employment of the vessel. Whether the project is a one Vessel project or a multi-Vessel project, MARAD believes that it is only reasonable to require that the projected cash flow and net income of the project support the Title XI debt service requirements. Therefore, MARAD declines to amend the requirement.

As to the comment that loans should provide for repayment without pre-payment penalties kicking in, payment terms, conditions, and penalties, if any, are determined prior to the issuance of the Obligations and are subject to negotiation. For MARAD to require that no pre-payment penalties will kick in if a loan should be prepaid is inappropriate and MARAD sees no reason to take such a position as the issue of pre-payment penalties must be negotiated between the Obligor and the Obligee(s).

Although no comments were specifically received regarding paragraphs (b)(3) and (b)(4), MARAD has re-evaluated this requirement and has determined that the IRR calculation is not necessary and is deleting the appropriate paragraphs. The IRR calculation regulation was originally intended to provide specific, clear procedures that would produce more accurate and complete information for selecting successful applicants. However, on August 6, 1992, MARAD issued a final rule which shifted the burden for computation of the IRR from the applicant to MARAD.

This section already outlines relevant factors that are considered by MARAD in making the economic soundness finding for a project. MARAD can make an economic soundness finding for a particular project based on the revenue, cost data, cash flows and other data already required to be submitted by all applicants. In view of the foregoing, the IRR calculation is not necessary to make a finding of economic soundness.

Section 298.18 Financing Advanced or Modern Shipbuilding Technology

Section 298.18(a). This paragraph states that the Secretary will approve Guarantees to finance Advanced or Modern Shipbuilding Technology only upon a finding by the Secretary that the Guarantees will aid in the transition from naval shipbuilding to commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

MARAD Response: Although no comments were received on this paragraph, MARAD has reevaluated the requirement for this finding as part of its overall concern to reduce regulatory burden. This finding is not a statutory requirement; it was incorporated in the Title XI regulations on March 31, 1994, with the publication of the interim final rule which became final on September 16, 1994. Subtitle D of the Authorization Act includes a similar requirement for eligible export vessels which does not apply to shipyard modernization and improvement.

In view of the fact that: (1) There is no statutory requirement for the Secretary to include the provision in paragraph (a) of this section; (2) Section 298.17 of the regulations already provides that, in evaluating project applications, the Secretary shall also consider whether, in the case of an Eligible Shipyard, the application provides for the capability of the shipyard to engage in naval vessel construction in time of war or national emergency; (3) paragraph (b) of this section states that the Secretary shall not approve applications for Advanced or Modern Shipbuilding Technology which, after taking into consideration certain factors, would preclude approval of another application which would result in a more desirable use of appropriated funds; and (4) § 298.3(e) states that priority will be given to applications from General Shipyard Facilities that have engaged in naval Vessel construction and that have pilot programs for shipyard modernization and Vessel construction, with respect to funds appropriated to the Secretary of Defense, it is now MARAD's position that General Shipyard Facilities applying for Guarantees to finance Advanced or Modern Shipbuilding Technology need not satisfy a mandatory requirement as to prior naval shipbuilding. The language in the paragraph is being amended accordingly.

Section 298.20 Term, Redemption and Interest Rate.

Section 298.20. One commenter stated that where charter rates are very low, financial assistance could be provided to an operator such as an extension of the Title XI maturity from 20 years to 25 years or a moratorium of the principal payments for a certain period of time to enable an owner to keep a ship out of lay-up.

MARAD Response: This section outlines Obligation criteria with respect to term limitations, required redemptions and interest rate. Title XI Obligations shall not have a maturity which exceeds the anticipated physical and economic life of the asset being financed and, with respect to vessels, no more than twenty-five years from certain dates. MARAD already has the authority to defer principal payments, if warranted. Further, to protect, preserve or improve the collateral held as security by MARAD to secure Title XI debt, § 298.28 provides MARAD discretion to make, or commit to make, an advance or payment of funds for Vessel-related expenses or fees.

Section 298.21 Limits

Section 298.21(c). One commenter supports inclusion of Guarantee Fees as an item of Actual Cost in addition to certain broker commissions and underwriting fees for export vessels.

MARAD Response: MARAD agrees with the comment that if Guarantee Fees are to be paid up front and are eligible to be financed with Title XI, then Guarantee Fees should be included as an item of Actual Cost. No further changes to paragraph (c) are necessary. With regard to broker commissions and underwriting fees for Eligible Export Vessels, paragraph (c)(4) does not allow ''fees, commissions or charges for granting or arranging for financing'', and paragraph (c)(6) does not allow ''underwriting or trustee's fees'' to be included in Actual Cost. Recognizing the importance that the payment of commissions plays in the export market, MARAD will allow commissions to be included in the foreign equipment and services amount of the Actual Cost of the project, provided: (1) A majority of the work done by the parties receiving the commissions is in the form of design and engineering work, and (2) the commissions represent a small amount of the total contract price. As the commissions represent a portion of the total shipyard contract price, therefore, there is no need to amend paragraphs (c)(4) and (c)(6). A new sentence is being added to paragraph (b) which states that commissions may be included in the amount of the Actual Cost of a project, subject to the foregoing provisions.

Section 298.21(d). As mentioned previously in the preamble, the NPRM solicited public comments regarding the guarantee of construction period financing, as authorized by the Title XI regulations. MARAD specifically invited comments on available forms of security, in addition to surety bonds, that could protect MARAD's interests as a lender, how progress should be monitored, what new procedures/ methodologies should be developed to

improve the progress payment system, and if payment of interest on the obligations should be made on a more frequent basis (i.e., weekly, monthly or quarterly) than that outlined in § 298.22, *Amortization of Obligations.* In addition, MARAD solicited comments on how the Title XI applicant will verify/certify to MARAD that certain costs have been paid prior to disbursement of Title XI funds from the escrow account, including, for example, the use of an agent on MARAD's behalf to verify that certain costs have been paid.

On the payment of interest issue, one commenter states that the question of whether interest should be paid more frequently has no bearing on construction risk. A requirement for more frequent payment than would be required after delivery would make issuance of long-term bonds during the construction period more awkward. Another commenter adds that interest during the construction period should be paid semi-annually. Finally, one commenter recommended that interest be collected monthly in arrears.

On the agent issue, one commenter states that the use of an agent is an unnecessary complication. Actual Cost is readily determined by inspection of invoice payments. The issue is really whether progress payment criteria established in the contract have been met. The commenter adds that MARAD should adopt a system with only four or five progress payments that are keyed to readily ascertained events, such as keel laying or start of fabrication. MARAD should avoid any elaborate audit procedures for costs incurred by the shipyard since the cost basis for the project is a fixed price. A second commenter states that the use of an agent by MARAD for certification of completion and payment of costs is similar to the ''privatization'' going on in many agencies and departments today and supports the concept. A final commenter adds that progress could be monitored by an approved agent and the shipyard and owner should have flexibility to develop procedures/methodologies. The commenter adds that the applicant could verify/certify certain costs paid prior to disbursement using an agent on behalf of MARAD.

Finally, one commenter suggests that the words ''or Advanced Shipbuilding Technology or Modern Shipbuilding Technology'' should not be inserted as proposed in § 298.21(d) because they are already in the current regulations.

MARAD Response: MARAD disagrees with the comment that the words ''or Advanced Shipbuilding Technology or Modern Shipbuilding Technology'' should not be inserted in § 298.21(d) because the words are already in the current regulations. Although § 298.21 (b) has already been amended to reflect the expansion of the Title XI program for financing Advanced Shipbuilding Technology and/or Modern Shipbuilding Technology, it is necessary that the applicant submit to MARAD documents substantiating all claimed costs eligible under that section prior to payment from the Escrow Fund or Construction Fund and prior to the final Actual Cost determination for the Advanced Shipbuilding Technology and/or Modern Shipbuilding Technology.

On the payment of interest issue, MARAD agrees that the frequency of making interest payments has no bearing on construction risk, and a requirement for a more frequent payment than would be required after delivery would make issuance of long-term bonds during the construction period more difficult. In view of the foregoing, MARAD does not believe that interest on Obligations should be paid on a more frequent basis than that outlined in § 298.22, which, in most cases, is semi-annually.

On the agent issue, MARAD disagrees with the comment that the use of an agent is an unnecessary complication. Provided that the methodology for substantiation of Actual Cost is determined prior to the establishment of an Escrow Fund or Construction Fund, using an agent on behalf of MARAD to verify/certify certain costs paid prior to disbursement can improve the administration of the Title XI program. MARAD believes that it is important to maintain flexibility in the procedures/methodologies for agent certification, and therefore declines to adopt by regulation a progress payment schedule based on specified milestones as such a payment schedule keyed to definitive events is already permissible.

Hence, MARAD will not amend the text of paragraph (d) as proposed in the NPRM.

Section 298.28 Advances

Concerning paragraph (a), one commenter suggested that the fourth sentence should be removed because the net result of the proposed inserts and deletions render the fourth sentence meaningless.

MARAD Response: MARAD agrees and the fourth sentence is being deleted.

Section 298.32 Required Provisions in Documentation

Section 298.32 (b). Pursuant to this section, the Obligor shall assign certain rights and shall covenant certain items as required by the Secretary.

Paragraph (b)(4) requires covenants relating to the annual filing of satisfactory evidence of continuing U.S. citizenship, in accordance with 46 CFR part 355, with the exception of Eligible Export Vessels and shipyards with Advanced or Modern Shipbuilding Technology projects. One commenter states that this requirement is inappropriate for those classes of Vessels which must be documented under the laws of the U.S. but are not required by Section 1101(b) of the Act to be owned by Section 2 citizens. Since, the Coast Guard is the agency charged with enforcing the documentation laws of the U.S. and its regulations at 46 CFR 67.163 require an annual report of eligibility for such documentation from the owners of all documented Vessels, the commenter writes that no useful purpose is served by requiring owners of cargo and passenger Vessels, tugs and towboats and barges and dredges to file affidavits pursuant to Part 355.

MARAD Response: Until the Act is further amended, MARAD will retain the regulation regarding the filing of affidavits pursuant to 46 CFR part 355.

Paragraph (b)(6) requires covenants to maintain marine and war risk hull and machinery insurance on the Vessel in an amount equal to 110 percent of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater. One commenter recommends that making the required insurance co-extensive with the Guarantee amount (as MARAD only guarantees up to 87½ percent of the Actual Cost of the Vessel) would ensure that MARAD is ''made whole'' in the event of a disaster, while not creating an unnecessary financial burden for the owners. In addition, the commenter recommends that war risk coverage should not be required for vessels operating in U.S. waters.

MARAD Response: War risk insurance covers other perils besides war, such as strikes, riots and civil commotions. MARAD has not required war risk insurance for inland Vessels, Great Lakes Vessels, or Vessels operating solely in the intercoastal waterway because they are in a protected environment from risks of war. Vessels operating in domestic coastal trades and Jones Act offshore trades, including Puerto Rico and Hawaii, are required to have war risk insurance because these vessels are often out of protected U.S. territorial waters and in international waters, where they might encounter a hostile vessel or plane. For example, in the

early 1960s a U.S.-flag vessel, the FLORIDIAN was attacked by a Cuban fighter plane in international waters off the coast of Florida. Another U.S.-flag vessel, operating in the U.S. coastwise trade during that timeframe, the MARINE SULFUR QUEEN, vanished without a trace or established cause somewhere off the Florida coast on a voyage from the U.S. Gulf Coast to the U.S. East Coast. In addition, there is the possibility of minor regional flare ups where there might be the possibility of extending hostilities into international waters where U.S.-flag vessels are transiting. Accordingly, MARAD has only agreed to waive the war risk insurance requirement for vessels operating solely on or in inland protected waters. Finally, war risk insurance is relatively inexpensive, with coverage for a $10 million vessel costing $2,500 per year.

With regard to the comments received on the covenants to maintain marine and war risk hull and machinery insurance on the Vessel in an amount equal to 110 percent of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater, MARAD has considered the commenter's request to reduce the amount of coverage to equal the outstanding Obligations on a Vessel. In view of the fact that: (1) Any payoff by MARAD pursuant to its Guarantee would include interest accruals on the outstanding Obligations, and (2) the potential for a dispute with other parties over the insurance proceeds is reduced if the Vessel is insured in an amount equal to 110 percent of the outstanding Obligations or up to the full commercial value of the Vessel, whichever is greater, MARAD does not agree with the commenter that the amount of insurance coverage should equal the amount of the outstanding Obligations. Hence, MARAD sees no reason to change the present wording of paragraph (b).

Section 298.33 Escrow Fund

Section 298.33 One commenter states that, in the requirement that a satisfactory certification as to the percentage of completion of the Vessel be made in conjunction with distributions from the Escrow Fund, the upfront payment of the Guarantee Fee as an item of Actual Cost needs to be factored into the percentage of completion.

MARAD Response: Paragraph (e) of this section outlines the necessary requirements for disbursing funds from the Escrow Fund. As the upfront Guarantee Fee will be included in the Actual Cost of a project and will be factored into the percentage of completion determination referenced in subparagraph (3), MARAD is not amending the present wording of this section.

Section 298.35 Reserve Fund and Financial Agreement

Section 298.35. The purpose of this section is to outline the requirements in a Title XI Reserve Fund and Financial Agreement (RFFA), which a company must enter into at the first Closing at which Obligations are issued. As mentioned previously, MARAD specifically solicited comments in the NPRM on any proposed amendments to the standard documentation, particularly with regard to Eligible Export Vessels and shipyard modernization.

Several commenters stated that inadequate time was given to review and comment on the RFFA; a reduction in all documentation, not just the RFFA, is badly needed but is too complex an issue to be dealt with now. The Title XI documentation is overly complicated and greatly increases transaction costs and discourages applicants according to these commenters. As a general comment, the documentation needs to be revised to be consistent with the recent changes in law for shipyard modernization and Eligible Export Vessels. One commenter suggests the establishment of an advisory committee composed of representatives from MARAD, the maritime bar, investment and commercial banking industry, shipbuilding industry and the shipowning and operating industry to review and assist in documentation revisions.

MARAD Response: As noted in § 298.3(a) above, MARAD has decided to defer consideration of this matter in order to avoid delay in issuance of this rule. MARAD supports the suggestion that a forum be established by a non-Governmental authority composed of representatives from MARAD, the maritime bar, investment and commercial banking industry, shipbuilding industry and the shipowning and operating industry to review and assist in revisions to the Title XI documents.

Section 298.36 Annual Guarantee Fee

Section 298.36. Most commenters oppose the lump sum prepayment of the annual Guarantee Fee, especially without the right of reimbursement in the event of prepayment. If the non-refundable-if-prepaid aspect were removed, then some of the commenters would support the lump sum payment of the annual Guarantee Fee. One commenter opposes the increase and prepayment of the Guarantee Fee unless it results in an increase in guarantee authority, as is provided in a current legislative proposal. Several commenters believe that the lump sum payment of the Guarantee Fee would force an applicant to incur increased project costs beyond those which would otherwise be due, making it more economical to build in other countries and resulting in MARAD and the applicant forfeiting currently existing program flexibility. One commenter states that the annual nature of the fee allows MARAD a second look at project exposure and provides an incentive for the prepayment of principal, as a means of reducing the applicant's real project financing costs. The commenter concludes by stating that the proposed change appears to be clearly outside the scope of the Title XI program.

Another commenter stated that there is no indication as to the discount rate to be used in calculating the present value of the lump sum Guarantee Fee. The commenter proposes that a discount rate equal to the coupon rate (expected to be carried for the guaranteed bonds issued for the project) be applied to calculate the guarantee fee due at the time of the date of the security agreement. The commenter adds that it should be made clear that no additional Guarantee Fee is required in the event of a refinancing.

Finally, a commenter argues that the calculation of the annual Guarantee Fee schedule should be based on the company's overall rating, i.e., whether the company is governed by the Section 12 or Section 13 covenants of its Title XI Reserve Fund and Financial Agreement, rather than a debt to equity ratio. The commenter recommends a 50 basis points fee for Section 13 governed companies and a 75 basis points fee for Section 12 governed companies.

MARAD Response: Section 1104(A)(e) of the Act, 46 App. U.S.C. 1274, provides that the Secretary is authorized to fix the Guarantee Fee for an Obligation and that all fees shall be computed and shall be payable to the Secretary under such regulations as prescribed by the Secretary. MARAD has exercised its authority to require the lump sum payment of the annual Guarantee Fee, especially without the right of reimbursement in the event of prepayment, to ensure that the Government will retain the full amount of the Guarantee Fee should the Obligations be retired prior to maturity, i.e., if a default occurs on the Obligations or the Obligations are prepaid. The regulatory change which indicates a modification in agency policy is within the scope of the Title

XI program. In addition, the lump sum Guarantee Fee payment would create an incentive for applicants to enhance the financial structure of their transactions in order to merit eligibility for the lowest possible Guarantee Fee rate, and therefore, reduce the risk associated with the project.

Contrary to the comments of one party, the lump sum payment of the annual Guarantee Fee would not result in an increase in the Title XI guarantee authority. The lump sum payment was part of a legislative proposal previously submitted to Congress which increased the Guarantee Fees charged for a Commitment. As the language increasing the Guarantee Fees charged has been deleted from the legislation, the lump sum payment of the Guarantee Fee will not lower the subsidy rate MARAD is required to calculate according to the Credit Reform Act of 1990. Therefore, the commenter is incorrect in stating that receipt of the guarantee fee up front will result in an increase of the amount of available Title XI funding without increasing appropriations.

The belief of several commenters that the lump sum payment of the Guarantee Fee would force an applicant to incur increased project costs beyond those which would otherwise be due is not true. It is estimated that the following amounts are similar: (1) The full payment of the first year's annual Guarantee Fee at the Closing as required prior to this final rule, and (2) the equity portion, or a minimum of 12½ percent of the lump sum payment being financed. With these similarities, the lump sum payment of the Guarantee Fee, and the potential of financing up to a maximum of 87½ percent of this amount, it is incorrect to assume the lump sum payment of the Guarantee Fee would force an applicant to incur increased project costs beyond those which would otherwise be due.

The comment that there is no indication in the NPRM as to the discount rate to be used in calculating the present value of the lump sum Guarantee Fee is also incorrect. The NPRM revised paragraph (e) of this section and stated, among other things, that in ''determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board quarterly rates.'' MARAD agrees with the comment that where bonds are issued in more than one series, the Guarantee Fee should be payable only to the extent of the total amount of obligations issued. The third sentence of the paragraph is deleted to coordinate the payment of the fee with § 298.36(b), which sets forth the method of calculating the fee.

Finally, MARAD disagrees with the comment that the calculation of the annual Guarantee Fee schedule should be based on the company's overall rating, i.e., whether the company is governed by the Section 12 or Section 13 covenants of its Title XI Reserve Fund and Financial Agreement, rather than a debt to equity ratio. The extent to which a company is leveraged is a reasonable basis for assessing risk insofar as determining the appropriate guarantee fee. In addition, the commenter proposes a fee range of ½ percent to ¾ percent; but this does not take into account the full Guarantee Fee range outlined in the statute of ¼ percent to ½ percent for undelivered vessels and ½ percent to 1 percent for delivered vessels.

Section 298.40 Defaults

Paragraphs (b) and (d) of *§ 298.40,* Defaults, provide that if a demand for payment of the Guarantees is made, the Secretary shall make payment of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment. One commenter suggested that the mandatory requirement for MARAD to pay off 100% of the outstanding debt in the case of a defaulting owner should be changed to provide an option for an assumption of the Obligations rather than an early payoff.

MARAD Response: In view of the fact that the Act provides that in the event of a default, the Secretary may assume the Obligor's rights and duties under the Title XI Obligation and agreements and may make any payments in default, MARAD is modifying paragraphs (b) and (d) accordingly.

Other Comments

In addition to the above comments received in response to the NPRM, several commenters provided comments which are not within the scope of this rulemaking. One commenter suggested that: (1) MARAD should consider making the Depository Trust Company (DTC) eligible as a Depository (there would be more competition and therefore better interest rates), (2) MARAD should be more adaptable to new financing techniques as they arise, and (3) Title XI Closings should take place at regional offices rather than in Washington. One other commenter expressed opposition to proposed legislation which increases the Guarantee Fee 50 percent.

MARAD Response: Any proposed legislation is not within the scope of this rulemaking. As to the other comments, MARAD has the flexibility under its existing regulations to consider a DTC as a Depository, to adapt to new financing techniques, and to allow Closings at regional offices if appropriate. As a result, no change in Section 298 is necessary.

The NPRM proposed removing and reserving § 298.25, financing repayment of construction-differential subsidy. Section 298.25 is removed but has not been reserved. As a result, § 298.26 through 298.28 have been redesignated sections 298.25 through 298.27.

In addition to the above, minor administrative changes have been made to §§ 298.3(e), 298.13(e)(1)(i), 298.13(e)(1)(i)(A), 298.14(a)(2)(i)(B), 298.14(a)(2)(iii)(G), 298.14(b)(1)(ii), and 298.32(a)(3).′

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Other Requirements of Law

This rulemaking has been reviewed under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it has been determined that this is not an economically significant regulatory action. However, since this rule would further the implementation of the National Shipbuilding Initiative program established under Subtitle D of Title XIII, Pub. L. 103–160, to support the industrial base and national security objectives by assisting in the reestablishment of a United States shipbuilding industry as a self-sufficient internationally competitive industry, and is of great interest to the U.S. maritime industry, it has been determined to be a significant rule under the Department's Regulatory Policies and Procedures. Accordingly, it is considered to be a significant regulatory action under E.O. 12866 and has been reviewed by the Office of Management and Budget. Because the economic impact should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for MARAD's review of applications. Its purpose is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs and the modernization and improvement of U.S. general shipyard facilities.

MARAD is publishing this final rule to carry out the Secretary's

responsibilities under Title XI and to improve program administration.

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

MARAD certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133–0018). Use of the present Maritime Administration Title XI Obligation Guarantees form will be continued pending revision and issuance of new forms, which must be approved by the Office of Management and Budget.

List of Subjects in 46 CFR Part 298

Loan programs-Transportation, Maritime carriers, and Mortgages.

Accordingly, 46 CFR part 298 is revised as follows:

PART 298—OBLIGATION GUARANTEES

Authority: 46 App. U.S.C. 1114(b), 1271 *et seq.*; 49 CFR 1.66.

Subpart A—Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing the provisions of Title XI of the Merchant Marine Act, 1936, as amended, governing Federal ship financing assistance (46 App. U.S.C. 1271 *et seq.*).

§ 298.2 Definitions.

For the purpose of this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 through 1294).

(b) *Actual Cost of a Vessel or Advanced or Modern Shipbuilding Technology* means, as of any specified date, the aggregate, as determined by the Secretary, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel or Advanced or Modern Shipbuilding Technology (described in § 298.21(b)).

(c) *Advanced Shipbuilding Technology* means:

(1) Numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(2) Novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(d) *Closing* means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Mortgage is executed as security to the Secretary.

(e) *Depository* means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico that is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation, and accepts deposits for purposes of implementing the program authorized by Title XI of the Act; but in the case of an Eligible Export Vessel can also mean, with the specific approval of the Secretary, foreign branches, but not the foreign subsidiaries, of such United States financial institutions.

(f) *Depreciated Actual Cost of a Vessel or Advanced or Modern Shipbuilding Technology* means the Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology, as defined in paragraph (b) of this section (less a residual value of 2½ percent of United States shipyard construction cost or, in the case of Advanced or Modern Shipbuilding Technology, a residual value as appropriate), depreciated on a straightline basis over the useful life of the Vessel or Advanced or Modern Shipbuilding Technology as determined by the Secretary, not to exceed twenty-five years from the date the Vessel or Advanced or Modern Shipbuilding Technology was delivered by the shipbuilder or manufacturer or, if the Vessel or Advanced or Modern Shipbuilding Technology has been reconstructed or reconditioned, the Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology depreciated on a straightline basis from the date the Vessel or Advanced or Modern Shipbuilding Technology was

delivered by the shipbuilder or manufacturer to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel or Advanced or Modern Shipbuilding Technology, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel or Advanced or Modern Shipbuilding Technology determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel or Advanced or Modern Shipbuilding Technology determined by the Secretary.

(g) *Documentation* means all or part of the agreements relating to an entire Title XI financing which must be furnished to the Secretary, irrespective of whether the Secretary is a party to each agreement.

(h) *Eligible Export Vessel* means a Vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(i) *Eligible Shipyard* means a private shipyard located in the United States.

(j) *General Shipyard Facility* means:

(1) For operations on land, any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment, or rebuilding of any Vessel, including graving docks, building ways, ship lifts, wharves and pier cranes; the land necessary for any structures or appurtenances; and equipment necessary for the performance of any function referred to in this paragraph; and

(2) For operations other than on land, any Vessel, floating drydock, or barge built in the United States, within the meaning of § 298.11(a), and used for, or a type that is usually used for, activities referred to in paragraph (k) of this section.

(k) *Guarantee* means the contractual commitment of the United States of America, represented by the Secretary, endorsed on each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default (described in § 298.40 of this part) and the date of payment.

(l) *Guarantee Fee* means the annual fee payable to the Secretary in consideration for the continuing Guarantees.

(m) *Indenture Trustee* means a bank with corporate trust powers, or a trust company, with a combined capital and surplus of at least $3,000,000, which is located in and organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico, which has duties under the terms of a Trust Indenture, entered into with the Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursement of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligees. Pursuant to a specific authorization of the Secretary, the Indenture Trustee may also authenticate the Guarantees.

(n) *Letter Commitment* means a letter from the Secretary to an applicant for Guarantees, setting forth specific determinations made by the Secretary with respect to the applicant's proposed project, as required by the Act and regulations of this part, and stating the Secretary's commitment to execute Guarantees, subject to compliance by the applicant with any conditions specified therein.

(o) *Maritime Administration* means that agency created within the Department of Transportation by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91–469 (84 Stat. 1036).

(p) *Modern Shipbuilding Technology* means a technology to be introduced into the shipyard that is comprised of the best available proven technology, techniques, and processes appropriate to advancing the state-of-the-art of the applicant shipyard, or exceeds the best available processes of American shipbuilding, and that will enhance its productivity and make it more competitive internationally.

(q) *Mortgage* means a first Preferred Mortgage on any Vessel or a first mortgage with respect to Advanced Shipbuilding Technology or with respect to Modern Shipbuilding Technology.

(r) *Obligation* means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

(s) *Obligee* means the holder of an Obligation.

(t) *Obligor* means any party primarily liable for payment of principal of or interest on any Obligation.

(u) *Paying Agent* means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

(v) *Person* means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other acceptable legal business entity, government, or any agency or political subdivision thereof.

(w) *Preferred Mortgage* means:

(1) In the case of a mortgage on a Vessel documented under United States law, whenever made, a mortgage that—

(i) Includes the whole of a Vessel;

(ii) Is filed in substantial compliance with 46 U.S.C. 31321;

(iii) Covers a documented Vessel or a Vessel for which an application for documentation has been filed that is in substantial compliance with the requirements of 46 U.S.C. Ch. 121 and the regulations prescribed under that Chapter by the United States Coast Guard; and

(iv) Has as the mortgagee—

(A) A State;

(B) The United States Government;

(C) A Federally insured depository institution, unless disapproved by the Secretary for that Vessel;

(D) An individual who is a citizen of the United States;

(E) A Person qualifying as a citizen of the United States pursuant to a provision of 46 App. U.S.C. 802; or

(F) A Person approved by the Secretary pursuant to regulations at 46 CFR 221.23(d); and

(2) In the case of a mortgage on an Eligible Export Vessel, whenever made, a mortgage that—

(i) Constitutes a mortgage that is established as security on an Eligible Export Vessel under the laws of a foreign country;

(ii) Was executed under the laws of that foreign country and under which laws the ownership of the Vessel is documented;

(iii) Is registered under the laws of that foreign country in a public register at the port of registry of the Vessel or at a central office;

(iv) Otherwise satisfies the requirements of 46 U.S.C. 31301(6)(B) to constitute a Preferred Mortgage; and

(v) Has the Secretary as the mortgagee, or such other mortgagee as is permitted by the applicable foreign law and approved by the Secretary.

(x) *Related Party* means as that term is defined by generally accepted

accounting principles outlined in paragraph 24 of Statement of Financial Accounting Standards No. 57, *Related Party Disclosures.*

(y) *Secretary* means the Secretary of Transportation, acting by and through the Maritime Administrator, Department of Transportation, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Transportation or the Maritime Administrator, Department of Transportation.

(z) *Secretary's Note* means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(aa) *Security Agreement* means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the Obligor to the Secretary as security for the issuance of Guarantees.

(bb) *Vessel* means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States; except that an Eligible Export Vessel shall not be documented under the laws of the United States.

§ 298.3 Applications.

(a) *Content and amendment.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and be certified in the manner prescribed on said form. All required information, including copies of any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements with respect to the Vessel or Vessels, shall be presented on the form or in exhibits and schedules submitted with the application. In addition, the Declaration of Lobbying form as required by 31 U.S.C. 1352 shall be filed with the initial application, as part of the formal submission. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees, stating the name of the applicant and the date of the application. Any amendment of data contained in the application filed shall be marked ''Amendment,'' and shall contain a statement on the first page thereof, clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of application. The certification required on Form MA 163 shall be affixed to each amendment.

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least four months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 15 calendar day period after submission, the Secretary will perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data is required, the Secretary will notify the applicant promptly in writing and the applicant will have 15 calendar days to correct deficiencies from the date of each request for additional information. If the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, within this 15 calendar day period, then the Secretary may terminate the processing of the application without prejudice. Once the Title XI application is considered complete by the Secretary, the Secretary will act on the application within a period of 60 calendar days, unless for good cause the Secretary deems it necessary to extend such period. If an application is not completed by the applicant and acted upon by the Secretary within four months from the submission date, unless such time period is extended by the Secretary, the Secretary will notify the applicant in writing that processing of the application is terminated and that the applicant may reapply at a later date. If an application is terminated by MARAD without prejudice, no new filing fee will be assessed for a subsequent application for a similar project that is filed within one year of the termination date. If a subsequent application is for a substantially different project as determined by MARAD on a case-by-case basis a new filing fee will be assessed.

(2) *Time requirements for documentation.* An applicant to whom a Letter Commitment has been issued shall submit four sets of the documentation to the Secretary for review. The documentation shall be submitted to the Secretary for review at least six weeks prior to the anticipated closing to afford the Secretary time to complete an adequate review of the documentation. The applicant shall utilize the standard form of documentation which will be provided by the Secretary.

(3) *Processing applications.* In processing applications, the Secretary shall consider the different degrees of risk involved with different applications.

(4) *Additional assurances.* For those applications not involving well established firms with strong financial qualifications and strong market shares, seeking financing guarantees for replacement vessels in an established market, in which projected demand exceeds supply, the Secretary may require additional assurances prior to approval, such as firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interest on other property and similar arrangements.

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of $5,000, which will be non-refundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(d) *Confidential Information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. The same requirement shall apply to any amendment to the application. If no claim of exemption is made when the application or amendment is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act (FOIA), of any information contained in the

application. The following procedures shall apply with respect to the assertion and review of FOIA exemption claims:

(1) Form and bases for claim. Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked ''Confidential Information,'' addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, by a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments or amendments thereto, to which exemption from disclosure is claimed by noting ''Confidential Information'' thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority.

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

(e) *Priority.* The Maritime Administration shall give priority for processing applications to vessels capable of serving as a naval and military auxiliary in time of war or national emergency, and requests for financing construction of equipment or vessels less than one year old as opposed to the financing of existing equipment or vessels that are one year old or older. Any applications involving the purchase of vessels currently financed under Title XI will also receive priority consideration for purposes of processing the assumption of the obligations as will applications from those willing to take guarantees for less than the normal term for that class of vessel. In regard to shipyards, priority will be given to applications from General Shipyard Facilities that have engaged in naval Vessel construction and that have pilot projects for shipyard modernization and Vessel construction, with respect only to funds appropriated to the Secretary of Defense, pursuant to provision of section 1359(a) of Pub. L. 103–160, 107 Stat. 1547. With regard to Eligible Export Vessels, the Secretary may not issue a commitment to guarantee Obligations for an Eligible Export Vessel unless the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an Eligible Export Vessel will result in the denial of an economically sound application to issue a commitment to guarantee Obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States, after considering:

(1) The status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States;

(2) The economic soundness of the applications referred to in paragraph (e)(1) of this section; and

(3) The amount of guarantee authority available.

(Approved by the Office of Management and Budget under control number 2133–0018)

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act, except as provided in paragraph (e) of this section, the applicant and any other Person (including, but not limited to shipowners and, if applicable, owner trustees, equity participants and bareboat charterers) shall establish their United States citizenship within the meaning of Section 2 of the Shipping Act, 1916, as amended, (''1916 Act'') (46 App. U.S.C. 802) and MARAD's regulation at 46 CFR 221.3(c). All persons holding a Preferred Mortgage on the Vessel who do not qualify as citizens of the United States shall submit on the date of the Closing evidence that they qualify for the MARAD approval granted pursuant to 46 CFR 221.23, or that they have received approval pursuant to 46 CFR 221.25. The Secretary will not approve an application providing for ownership of such Vessel by, or bareboat chartering of such Vessel to, a non-U.S. citizen. Citizenship may also be required of any Person who is deemed by the Secretary to be an operator of the Vessel or who has authority to direct the operation of the Vessel on behalf of the shipowner. Certain chartering arrangements, including time chartering and contracts of affreightment, have been given general approval by the Secretary pursuant to Sections 9, 37, and 41 of the 1916 Act. See part 221 of title 46 for more details on these approvals and other approvals granted concerning chartering and mortgaging of U.S. documented Vessels.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR part 355.

(c) *After Letter Commitment.* Any Person who has become identified with the project, for a reason indicated in paragraph (a) of this section, and who has not previously established United States citizenship within the prior twelve calendar months, promptly shall establish its United States citizenship in the form and manner prescribed in 46 CFR part 355.

(d) *Supplemental proof.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (c) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such Closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such Closing.

(e) *Exemption.* With regard to Eligible Export Vessels and Eligible Shipyards, the applicant and any other Person, (including, but not limited to settlors, owner trustees, owner participants and bareboat charterers) shall be exempted from complying with the provisions of paragraphs (a) through (d) of this section.

§ 298.11 Vessel requirements.

Each Vessel to be constructed, reconstructed or reconditioned and financed by issuance of Guarantees shall meet the following criteria:

(a) *United States Construction.* A Vessel, including an Eligible Export Vessel, financed by an Obligation Guarantee is considered to be of United States construction if the Vessel is assembled in a shipyard geographically located within the United States. A U.S.-flag Vessel must meet the applicable United States Coast Guard requirements. An Eligible Export Vessel must meet the applicable laws, rules,

and regulations of its country of documentation, all applicable treaties, conventions on international agreements to which that country is a signatory, and the laws of the ports it serves. An Eligible Export Vessel shall be constructed in accordance with the requirements of the International Maritime Organization.

(b) *Actual Cost.* The applicant's estimated Actual Cost as described in § 298.21(b), must be approved by the Secretary for the construction, reconstruction, reconditioning of a Vessel as a condition for issuance of the Letter Commitment. The Secretary may require the applicant to have the shipyard that has contracted to build the vessel to submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data. The estimated cost of the Vessel may include escalation for the anticipated construction period of the Vessel, as described in § 298.21(e).

(c) *Class condition and operation.* The Vessel shall be constructed, maintained, and operated so as to meet the highest classification, certification, rating, and inspection standards for Vessels of the same age and type imposed by the American Bureau of Shipping (ABS), or other such standards as may be approved by the United States Coast Guard, or in the case of an Eligible Export Vessel, such standards as may be imposed by a member of the International Association of Classification Societies (IACS) classification societies to be ISO 9000 series registered or Quality Systems Certificate Scheme qualified IACS members who have been recognized by the United States Coast Guard as meeting acceptable standards with such recognition including, at a minimum, that the society meets the requirements of IMO Resolution A.739(18) with appropriate certificates required at delivery, so long as the home country of that IACS member accords equal reciprocity, as determined by the Secretary, to United States classification societies. A Vessel, except an Eligible Export Vessel, shall comply with all applicable laws, rules, and regulations as to condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successor agencies, and all applicable treaties and conventions to which the United States is a signatory, including, but not limited to, the International Convention for Safety of Life at Sea. An Eligible Export Vessel shall be documented in a country that is party to the International Convention for Safety of Life at Sea, or other treaty, convention, or international agreement governing vessel inspection to which the United States is a signatory, and shall comply with the applicable laws, rules, and regulations of its country of documentation, all applicable treaties, conventions on international agreements to which that country is a signatory, and the laws of the ports it serves. An Eligible Export Vessel shall be constructed in accordance with the requirements of the International Maritime Organization.

(d) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of class (if the Vessel is classified), and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

(e) *Metric Usage.* The preferred system of measurement and weights for Vessels and Advanced and Modern Shipbuilding Technology shall be the metric system.

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant is an incorporated company, it shall submit the following identifying information:

(i) Exact name of applicant and tax identification number of a U.S. corporation, or if appropriate, international identification number of the applicant;

(ii) State or country in which incorporated and date of incorporation; and

(iii) Address of principal executive offices and of important branch offices, if any.

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* If the applicant is a partnership, joint-venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of partnership, association, or unincorporated company, and tax identification number, or if appropriate, international identification number of applicant;

(ii) Business address;

(iii) Date of organization;

(iv) Name of partners (general and special) of the partnership or trustee and holders of beneficial interest in the association or company;

(v) Certified copy of Partnership or Joint Venture Agreement, as amended; and

(vi) A detailed statement regarding financial, management and/or equity transactions which could have a significant impact on the ability of the applicant to meet the requirements placed on the applicant under its financing.

(3) *Other entities.* For any entity that does not fit the descriptions in paragraphs (b)(1) through (b)(3) of this section, MARAD will specify the information that the entity shall submit regarding its identity and ownership.

(c) *Applicants: Business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of applicant and of any predecessor of the applicant. If any change in the principal business activities is presently contemplated (whether in connection with the work to be financed by the guarantees applied for, or otherwise), applicant shall give a

brief statement of the nature and circumstances thereof;

(2) A list of all companies or persons (hereinafter referred to as related companies) that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, the applicant. Also indicate the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart. Specify whether any related companies have previously applied for or received any Title XI assistance;

(3) A statement of whether or not during the past 5 years the applicant, or any predecessor or related company, has been in bankruptcy or in reorganization under the Federal Bankruptcy Act or in any other insolvency or reorganization proceedings under either domestic or foreign statutes, and whether or not any substantial property of the applicant or a predecessor or related company has been acquired in any such proceedings or has been subject to foreclosure or receivership during such period, and details of all such occurrences; and

(4) A statement of whether or not the applicant or any predecessor or related company is now, or during the past 5 years has been, in default under any agreement or undertaking:

(i) With others, the United States or a country other than the United States; or

(ii) Guaranteed or insured by the United States or a country other than the United States.

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the applicant; and

(2) The name and address of each organization engaged in business activities related to those carried on or to be carried on by the applicant with which any person named in answer to paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the principal properties of the applicant employed in its business, other than vessels, describing encumbrances, if any;

(2) A statement with respect to each vessel owned by the applicant, or operated by it under charter, stating name, gross tonnage, net tonnage, deadweight tonnage, age, type, speed, registry, cargo capacity and number and type of cargo units (container, trailer, etc.); and

(3) A summary statement which addresses the services, routes, or line (including ports served) on which the applicant operates any of the vessels owned or chartered by it. Also, a schedule and tonnage of cargo carried by the applicant during the two preceding years, the units carried (containers, barges, passengers, etc.) and the cargo capacity utilization factor experienced.

(f) *Operating ability.* (1) In the case of an applicant for a vessel financing Guarantee, the applicant shall submit a detailed statement showing its ability to successfully operate the Vessel(s), including name, education, background of, and licenses held by all senior supervisory personnel concerned with the physical operation of the ships owned by the applicant or proposed for construction. If not now an operator of Vessel(s), the applicant shall indicate a proposed organizational structure of key operating personnel or the name of the proposed operating agent. If now the owner and/or operator of ships, the applicant shall furnish data as to union affiliations and existing contracts necessary to the management and operation of the Vessel(s) covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which the company acts as agent. If a company other than the applicant is designated to operate the Vessel(s), then the above information shall be provided for that company, together with a copy of the proposed operating agreement(s).

(2) In the case of an Eligible Shipyard which is an applicant for a Guarantee for Advanced or Modern Shipbuilding Technology, a detailed statement shall be submitted evidencing its ability to successfully construct/reconstruct vessel(s), including name, education, background of, and licenses, if any, held by all senior supervisory personnel in the shipyard concerned with the physical operation of the shipyard, union affiliations and existing contracts necessary to the management and operation of the shipyard.

§ 298.13 Financial requirements.

(a)(1) *In general.* To be eligible for guarantees, the applicant and/or the parent organization (when applicable), and any other participants in the project having a significant financial or contractual relationship with the applicant shall submit information, respectively, on their financial condition. This information shall be submitted at the time of the application and supplemented as subsequently required by the Secretary. In addition, the applicant shall submit information satisfactory to the Secretary that financial resources are available to support the project which is the subject of the Title XI application.

(2) *Cost of the project.* Applicant shall submit the following cost information with respect to the project:

(i) In the case of an applicant for Vessel financing Guarantees, a detailed statement of the estimated Actual Cost of construction, reconstruction or reconditioning of the Vessel(s) including those items which would normally be capitalized as Vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to Vessel(s) delivery. Each item of foreign components and services shall be excluded from Actual Cost, unless a waiver is specifically granted for the item, which waiver shall not be granted for major foreign components of the hull and superstructure. The standard for granting a waiver is certification by the applicant, to be reviewed by the Secretary, that a foreign item or service is not available in the United States on a timely or price-competitive basis, or is not of sufficient quality. Although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements imposed by paragraph (a)(3) of this section. An illustration of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is outlined below. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

ILLUSTRATION—COST OF FOREIGN COMPONENTS SATISFYING EQUITY REQUIREMENTS.

Assuming that the total project cost is $100 million, of which the cost of major foreign components in the hull and superstructure total $20 million, and that the Title XI applicant has requested financing for 87½ percent of the cost of the project, the following is a demonstration of how the value of the major foreign components in the

hull and superstructure may be used in meeting the equity requirements of § 298.13 (a)(3):

Cost of Foreign Components Excluded from Actual Cost

Cost of Project ..... $100.0 million
Cost of Major Foreign Components in Hull and Superstructure ..... $20.0 million
Total Actual Cost of Project..... $80.0 million
Required Equity (12½ percent)..... $10.0 million
Total Project Cost Financed w/Title XI (87½ percent).....$70.0 million

The $10 million in required equity may be satisfied by the owner's contribution of the foreign components of hull and superstructure to the project.

(ii) In the case of Advanced or Modern Shipbuilding Technology, a detailed statement of the actual cost of such technology, including those items which would normally be capitalizable. If any of the costs have been incurred by written contracts, signed copies shall be forwarded with the application. The applicant may be required to have manufacturers submit back-up cost details and technical data. This information shall be submitted in the format prescribed by the Title XI application procedures.

(iii) A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(iv) A detailed statement showing any other costs associated with the project which were not included in paragraphs (a)(2) (i) through (iii) of this section, such as: Legal and accounting fees, printing costs, guarantee fees, vessel insurance, underwriting fees, fee to a Related Party, etc.

(v) If the project involves refinancing, the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and supplemental schedules shall be submitted at the time of filing the application.

(3) *Financing.* The applicant shall describe, in detail, how the costs of the project (sums referred to in paragraph (a)(2) of this section) are to be funded and the timing of such funding. The applicant shall include any vessel trade-ins, related or third party financings, etc. The applicant shall also provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved. If the applicant intends to utilize co-financing (involving a blend of Title XI and private financing for the debt portion), the terms and conditions of such financing shall be subject to approval by the Secretary. The applicant shall demonstrate with financial statements that at least 12½ percent of the construction or reconstruction costs of the Vessel(s) or the cost of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology will be in the form of equity and not additional debt, except to the extent allowed by paragraph (g) of this section. The applicant shall disclose all of the Vessel(s), Advanced Shipbuilding Technology or Modern Shipbuilding Technology financing in the format prescribed by the Title XI application procedures. If the applicant uses co-financing (involving a blend of Title XI and private financing for the debt portion of the project), the ability of the co-financiers to exercise their rights against collateral shared with the Secretary for any transaction shall be subject to the approval of the Secretary.

(4) *Financial Information.* The applicant shall submit the following additional financial statements with respect to both the proposed Title XI project and the overall operations of the applicant, prepared in accordance with 46 CFR part 232 and including notes to explain the basis used for arriving at the figures (in the case of Eligible Export Vessels, the Secretary may accept financial information provided in the normal accounting system used by the applicant provided that it is an accepted accounting system in the applicant's country of origin and, further, provided that the applicant provides a reconciliation of the major differences between the accounting system employed and U.S. generally accepted accounting principles):

(i) The three most recent audited financial statements of the applicant, its parent, if any, and other significant participants. If the applicant is a new entity or is to be funded from or guaranteed by external source(s), it shall provide the audited financial statements of the funding source(s);

(ii) A pro forma balance sheet of the applicant as of the estimated date of execution of the Guarantees reflecting the assumption of the Title XI Obligations;

(iii) A schedule of amortization of all existing debt (Title XI or otherwise) of the applicant for the period in which the Guarantees are to be outstanding; and

(iv) A Sources and Uses Statement for the first full year of operations and the following five years, including a clear source of funding for the payment of all debt when due.

(b) *Financial definitions.* For the purpose of this section and §§ 298.35 and 298.42 of this part:

(1) *Company* means any Person subject to financial requirements imposed under paragraphs (d) and (e) of this section and paragraphs (b) and (c) of § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) *Working Capital* means the difference between current assets and current liabilities, adjusted as follows:

(i) Current assets shall exclude:

(A) Amounts in or required to be set aside in any Title XI Reserve Fund, pursuant to § 298.35(e) or Capital Construction Fund Security Amount prescribed by § 298.35(f), (excluding that portion of such fund which is available for the payment of current liabilities) that is being maintained pursuant to an agreement covering a Vessel owned or leased by the company, or in another similar fund required under any other mortgage, indenture or other agreement to which the company is a party; and

(B) Any receivables from a Related Party or from any stockholder, director, officer or employee (or their family) of the company or of a Related Party other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days.

(ii) Current liabilities shall include the current portion of charter hire and other lease obligations not already included as a current liability.

(3) *Equity (net worth)* shall be exclusive of:

(i) Any receivables from a Related Party or from any stockholder, director, officer or employee (or their family) of the company or of a Related Party other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days, and

(ii) Any increment resulting from the reappraisal of assets.

(4) *Long Term Debt* shall exclude the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. However, there shall be included any guarantee or other liability for the debt of any other Person.

(5) *Capitalizable Cost* means the aggregate of the Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology and those other items which customarily would be capitalized as Vessel costs or Advanced or Modern Shipbuilding Technology costs under generally accepted accounting principles and those other items which customarily would be capitalized as Vessel costs under generally accepted accounting principles.

(6) *Depreciated Capitalizable Cost* means the Capitalizable Cost of a Vessel or Advanced or Modern Shipbuilding Technology, depreciated on a straight

line basis over the same useful life as determined by the Secretary for Actual Cost, and depreciated as required by § 298.21(g).

(c) *Applicability.* The financial resources shall be adequate to meet the Equity requirements in the project and existing Working Capital requirements, as set forth in paragraphs (d) and (e) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels or Advanced or Modern Shipbuilding Technology to be security to the Secretary for the Guarantees, except that if the owner is not the operator, the overall financial requirements shall be allocated among the owner, the operator and other parties as determined by the Secretary.

(2) The Company shall satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program or in connection with other Advanced or Modern Shipbuilding Technology financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, a pro forma balance sheet shall be submitted at the time of the application, reflecting any adjustment made pursuant to paragraph (d)(1)(i) of this section, and a revised pro forma balance sheet, reflecting the completion of the projected financing, shall be submitted at least five business days before the first Closing at which the Obligations are issued.

(d) *Primary financial requirements at Closing.* Where the primary minimum financing requirements at Closing are satisfied, the financial convenants in § 298.35(b) are applicable. Primary financial requirements can apply to one or more Companies, and are determined as follows:

(1) *Owner as operator.* Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal Vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, the Secretary may adjust the requirement as considered appropriate. Also, if the Secretary determines that the Company's Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, the Secretary may make adjustments to the Working Capital requirements.

(ii) *Equity (net worth).* The Company's Equity shall be the greater of:

(A) 50 percent of its Long Term Debt or

(B) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment.

(2) *Lessee or charterer as operator.* Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) *Working Capital.* The operator's Working Capital requirement shall be the same as that which would have otherwise been imposed on the owner as operator under paragraph (d)(1)(i) of this section and based on the same premise stated therein.

(ii) *Long Term Debt.* The operator's Long Term Debt shall not be greater than twice its Equity.

(iii) *Equity (net worth).* Different Equity requirements shall be imposed on the owner and operator of the Vessel, respectively, as follows:

(A) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(B) The operator's Equity shall be the same as that which would have otherwise been required of the owner as operator under paragraph (d)(1)(ii) of this section.

(3) *Owner as General Shipyard Facility.* Where the owner of Advanced or Modern Shipbuilding Technology is a General Shipyard Facility, minimum requirements at Closing will be the same as those set forth in paragraph (d)(1) of this section for an owner as operator.

(e) *Special financial requirements at closing.* If the proposed project involves a leverage lessor, parent company or ''hell or high water'' charterer committed to financing the debt service for the term of the Guarantees and who meets the primary financial requirement at closing, then with respect to the applicant, the eligibility for Guarantees may be based upon satisfaction of special financial requirements, in which the financial covenants imposed and the requirements for maintenance of a Title XI Reserve Fund shall be as provided for in § 298.35(c) of this part. Special financial requirements are as follows:

(1) Owner as operator. Where the owner is the Vessel operator, the special requirements at Closing are as follows:

(i) *Working Capital.* The Company's Working Capital, which may be adjusted by the Secretary in accordance with the provisions set forth in paragraph (d)(1)(i) of this section, shall be an amount at least equal to the sum of the following:

(A) The first year's debt service relating to the Vessel to be financed upon delivery (redelivery in the case of a reconstructed or reconditioned Vessel), or the first year's debt service relating to the Vessel to be financed or refinanced after delivery. With respect to a reconstructed or reconditioned Vessel, the estimated Capitalizable Cost or Depreciated Capitalizable Cost, whichever is applicable (depending upon when financing occurs), shall be that related only to the cost of work performed in the reconstruction or reconditioning;

(B) One year's premium for vessel insurance including Hull, Machinery, Protection and Indemnity, and War Risk coverage; and

(C) One year's Guarantee Fee.

(ii) *Equity (net worth).* The Company's Equity shall be at least equal to 90 percent of the Equity as shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but not less than the sum of the following:

(A) The difference between:

(*1*) The estimated Capitalizable Cost of a new Vessel to be financed upon delivery, the estimated Capitalizable Cost of the work to be performed in reconstructing or reconditioning a Vessel, the Depreciated Capitalizable Cost of an existing Vessel to be refinanced or the Depreciated Capitalizable Cost of a new Vessel to be financed after delivery, and

(*2*) The amount of the Guarantees; and

(B) The amount of Working Capital as determined in accordance with the provisions of paragraph (e)(1)(i) of this section.

(2) *Lessee or charterer as operator.* Where the lessee or charterer is the Vessel operator, the special financial requirements at Closing are as follows:

(i) *Working Capital.* The Company shall have Working Capital in an amount determined in accordance with the provisions of paragraph (e)(1)(i) of this section, applicable as if the owner were the operator.

(ii) *Equity (net worth).* Different Equity requirements shall be imposed on the operator and the owner, respectively as follows:

(A) The operator shall have Equity at least equal to 90 percent of the Equity

shown on the last audited balance sheet dated not earlier than six months before the issuance of the Letter Commitment, but no less than its Working Capital requirement.

(B) The owner shall have Equity in an amount determined in accordance with the provisions of paragraph (e)(1)(ii)(A) of this section.

(3) *Owner as General Shipyard Facility.* Where the owner of Advanced or Modern Shipbuilding Technology is a General Shipyard Facility, special financial requirements at Closing will be the same as those outlined in paragraph (e)(1) of this section for an owner as operator insofar as they apply to such technology.

(f) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, the Secretary may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraphs (d) and (e) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(g) *Subordinated debt considered to be Equity.* With the consent of the Secretary, part of the Equity requirements applicable under paragraphs (a)(3), (d) and (e) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Reserve Fund and Financial Agreement (described in § 298.35 of this part). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees or mortgage insurance under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to the Secretary, providing, among other things, that if any Title XI financing or advance by the Secretary to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness incurred by the Obligor and to any security interest obtained by the Secretary in that property or other property, with respect to the subsequent indebtedness.

(h) *Modified requirements.* The Secretary may waive or modify the financial terms or requirements otherwise applicable under §§ 298.13, 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. The Secretary may impose similar financial requirements on any Person providing other security for the Guarantees.

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* No Letter Commitment for guarantees shall be given by the Secretary without a finding that the proposed project, with respect to which the Vessel(s) or Advanced or Modern Shipbuilding Technology to be financed or refinanced under Title XI, will be economically sound.

(1) *Basic feasibility factors.* In making the economic soundness findings the Secretary shall consider all relevant factors, including, but not limited to:

(i) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) The market potential for the employment of the Vessel or utilization of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology of a General Shipyard Facility over the life of the guarantee;

(iii) Projected revenues and expenses associated with employment of the Vessel or utilization of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology of a General Shipyard Facility;

(iv) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the Vessel or utilization of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology of a General Shipyard Facility;

(v) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(vi) Other relevant criteria.

(2) *Project Feasibility.* The applicant shall state in detail the purpose for the obligations to be guaranteed and shall supplement the application by exhibits deemed to be necessary. The applicant shall submit the following information to demonstrate the economic feasibility of the project over the Guarantee period.

(i) *Relevant market.* A written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(A) Nature and amount of cargo/passengers available for carriage and applicant's projected share (provide also the number of units; i.e., containers, trailers, etc.);

(B) Services or routes in which the Vessel(s) will be employed, including an itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency time, proposed number of annual sailings and number of annual working days for the Vessel(s) or, with respect to Advanced or Modern Shipbuilding Technology, how the equipment will be employed;

(C) Suitability of the Vessel(s) or Advanced or Modern Shipbuilding Technology for their anticipated use;

(D) Significant factors influencing the applicant's expectations for the future market for the Vessel(s) or Advanced or Modern Shipbuilding Technology, for example, competition, government regulations, alternative uses, and charter rates; and

(E) Particulars of any charters, contracts of affreightment, transportation agreements, etc. The narrative should be supplemented by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(F) The potential for purchasing existing equipment of a reasonable condition and age from another source, including information regarding—

(*1*) Market assessment concerning the availability and cost of existing equipment that may be an alternative to new construction or the new technology;

(*2*) The cost of modification, reconditioning or reconstruction of existing equipment to make it suitable for intended use; and

(*3*) Descriptions of any bids or offers which the company had made to purchase existing equipment, especially Vessels which currently are financed with Title XI Obligations including date of offer, Vessels and amount of offer.

(ii) *Revenues.* A detailed statement of the revenues expected to be earned from the project based upon the information in paragraph (a)(2) of this section. The revenues shall be based on a realistic estimate of the Vessel(s) or the new technology utilization rate at a breakeven rate for the project. A justification for the utilization rate shall be supplied and should indicate the number of days per year allowed for maintenance, drydocking, inspection, etc.

(iii) *Expenses.* A detailed statement of estimated daily vessel expense or expenses associated with Advanced or Modern Shipbuilding Technology, including the following (where applicable):

(A) Wages, including staffing (submit itemized staffing schedule and wages, identifying the seamen's unions involved), and aggregated as to straight time, overtime and fringe benefits;

(B) Subsistence cost (indicate cost per person per day);

(C) Fuel cost (specify purchase ports), including estimated fuel consumption at design speed loaded and in port;

(D) Cost of stores, supplies and equipment, segregated as to Deck, Engine and Stewards Departments;

(E) Maintenance and repair cost at midlife of ship (specify in years) segregated as to voyage repairs, special surveys, drydocking and tailshaft removal, annual survey and structural renewals;

(F) Insurance costs, Hull and Machinery, Protection and Indemnity, War Risk and other (an insurance broker's estimate based upon current premium rates, if available, is considered preferable); and

(G) Other expenses directly allocable to the asset (indicate items included).

(iv) *Estimated voyage expense:* These items shall include:

(A) Port expense segregated by port as to agency fees, wharfage and dockage and other port expenses;

(B) Cargo expense, segregated as to stevedoring and other cargo expense (show average cost per ton for loading and discharging for each port or geographic area);

(C) Brokerage expense, segregated as to freight and passenger; and

(D) Other voyage expense segregated as to canal tolls and other expense (indicate items included).

(v) *Owner's expenses annually.* These expenses shall be segregated as to:

(A) Interest and amortized principal on mortgage indebtedness;

(B) Estimated government Guarantee Fee; and

(C) Salaries and other administrative expenses (indicate basis of allocations).

(b) *Objective Criteria.* The Secretary shall make a finding of economic soundness with respect to each proposed project based on an assessment of the entire project. In order to be considered for approval, a project must meet the following criteria as determined by the Secretary:

(1) The projected long-term demand (equal to length of financing being requested) for the particular Vessel(s) or new technology to be financed must exceed the supply of similar Vessels or new technology in the applicable markets, based on the Secretary's assessment of existing equipment, similar Vessels or new technology under construction and the projected need for new equipment in that particular segment of the maritime industry. Such an assessment shall be determined by the Secretary's analysis of the following three elements:

(i) Conformity of the company's projections with supply and demand analyses prepared by the Maritime Administration;

(ii) Availability of charters, letters of intent, outstanding contractual commitments, contracts of affreightment, transportation agreements or similar agreements or undertakings; and

(iii) The applicant's existing market share compared with the market share necessary to meet projected revenues.

(2) A projected cash flow and net income, supported by the findings of paragraph (b)(1) of this section, that is sufficient to meet the projected Title XI debt service requirements and any other debt obligations of the company.

§ 298.15 Investigation fee.

(a) *In general.* Prior to the issuance of the Letter Commitment the applicant shall pay an Investigation Fee, computed as hereinafter provided, to the Secretary in the amount stated in the Letter Commitment. This fee is imposed to pay for the investigation of the project described in the application and the participants in the project, the appraisal of properties offered as security, Vessel inspection during construction, reconstruction or reconditioning (where applicable) and other administrative expenses. If, for any reason, the Secretary shall subsequently disapprove the application, one-half of the Investigation Fees shall be due and payable.

(b) *Base Fee.* The investigation fee shall be one-half of one percent on obligations to be issued up to and including $10,000,000 and ⅛ of one percent on all obligations to be issued in excess of $10,000,000. The $1,000 filing fee previously paid upon filing the original application (described in § 298.3 of this part) shall be credited against the investigation fee.

§ 298.16 Substitution of participants.

(a) Application may be made to the Maritime Administration for permission to substitute participants to a Mortgage and/or Security Agreement in a financing that is receiving assistance authorized by Title XI of the Act, both prior and subsequent to amendment by Pub. L. 92–507. A non-refundable fee shall be imposed, payable at the time of application. This fee shall be in addition to the Annual Guarantee Fee or annual premium charge for Mortgage insurance, whichever is applicable.

(b) A $3,000 fee shall be required to defray all costs of processing and reviewing a joint application by a mortgagor and/or Obligor and a proposed transferee of a Vessel or Advanced or Modern Shipbuilding Technology, which is security for Title XI debt, if the proposed transferee is to assume the Mortgage and/or the Security Agreement.

§ 298.17 Evaluation of applications.

(a) In evaluating project applications, the Secretary shall also consider whether the application provides for:

(1) The capability of the Vessel(s) serving as a naval and military auxiliary in time of war or national emergency.

(2) The financing of the Vessel(s) within one year after delivery.

(3) The acquisition of Vessel(s) currently financed under Title XI by assumption of the total obligation(s).

(4) The Guarantees extend for less than the normal term for that class of vessel.

(5) In the case of an Eligible Shipyard, the capability of the shipyard to engage in naval vessel construction in time of war or national emergency.

(6) In the case of Advanced or Modern Shipbuilding Technology, the Guarantees extend for less than the technological life of the asset.

(b) In determining the amount of equity which must be provided by the applicant, the Secretary shall consider, among other things, the following:

(1) The financial strength of the company;

(2) Adequacy of collateral; and

(3) The term of the Guarantees.

§ 298.18 Financing Advanced or Modern Shipbuilding Technology.

(a) *Initial criteria.* The Secretary may approve Guarantees issued to finance Advanced or Modern Shipbuilding Technology at a General Shipyard Facility. The Secretary will approve such Guarantees after consideration of the following factors: whether the Guarantees will aid in the transition from naval shipbuilding to commercial ship construction for domestic and export sales, will encourage shipyard modernization, and/or will support increased productivity. The applicant shall provide a detailed statement with the Guarantee application which will provide the basis for such consideration by the Secretary.

(b) *Other conditions.* Applications for loan guarantees under this section shall not be approved unless the Secretary determines that the following requirements have been met:

(1) The term for such Guarantees will not exceed the reasonable economic

useful life of the collective assets which comprise this technology, as determined by the Secretary;

(2) There is sufficient collateral to secure the Guarantee; and

(3) Approval of the application will not preclude approval of any other pending application for Advanced or Modern Shipbuilding Technology Guarantees which, in the sole opinion of the Secretary, would result in a more desirable use of appropriated funds. The Secretary's opinion will take into consideration such factors as the types of vessels which will be built by the shipyard, the productivity increases which will be achieved, the geographic location of the shipyard, the long-term viability of the shipyard, the soundness of the financial transaction, any financial impact on other Title XI transactions, and the furtherance of the goals of the Shipbuilding Act.

§ 298.19 Financing Eligible Export Vessels.

(a) *Transmittal to Secretary of Defense.* Upon receiving an application for a loan Guarantee for an Eligible Export Vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of Defense of the potential use of the Vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan Guarantee under this section solely on the basis of the type of vessel to be constructed with the loan Guarantee. The authority of the Secretary of Defense to disapprove a loan Guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate. The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense.

(b) *Determinations by the Secretary.* (1) If the loan Guarantee commitment cost of any such Vessel is made available from funds transferred from the Secretary of Defense pursuant to section 108 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160, 107 Stat. 1547), the Vessel must be of at least 5,000 gross tons and found by the Secretary to be commercially marketable on the international market. Vessels of less than 5,000 gross tons can receive Guarantees with funds appropriated to the Department of Transportation.

(2) Such Guarantees shall not be approved unless:

(i) The Secretary finds that the construction, reconstruction or reconditioning of the Vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency; and

(ii) The owner of the Vessel agrees with the Secretary that the Vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(3) The Secretary may approve Guarantees issued to finance Eligible Export Vessels. Such Guarantee shall not be approved unless the Secretary determines that the countries in which the shipowner, its charterers, guarantors, or other financial interests supporting the transaction, if any, have their chief executive offices or have located a substantial portion of their assets, present an acceptable financial or legal risk to MARAD's collateral interests. The Secretary's determination shall be based on confidential risk assessments provided by the Export-Import Bank of the United States and country risk analyses provided by the Inter-Agency Country Risk Assessment System and shall take into account any other factors related to the loan guarantee transaction deemed pertinent by the Secretary.

Subpart C—Guarantees

§ 298.20 Term, redemptions and interest rate.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, not exceeding the anticipated physical and economic life of the Vessel or Vessels or Advanced or Modern Shipbuilding Technology. Such maturity date may be less than but in no event more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees;

(3) The later of twenty-five years from the date of original delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as determined by the Secretary; and

(4) The technological life of the Advanced or Modern Shipbuilding Technology.

(b) *Required redemptions.* Where multiple Vessels or multiple Advanced Shipbuilding Technology or Modern Shipbuilding Technology assets are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation must be determined by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary.

§ 298.21 Limits.

(a) *Actual Cost basis.* The amount of Obligations to be issued shall be satisfactory to the Secretary based upon the economic soundness of the transaction. Such amount may be less than but in no event more than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104A(b)(2) or section 1104B(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels or Advanced Shipbuilding Technology or Modern Shipbuilding Technology asset(s). If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard with respect to such horsepower shall be continuous rated horsepower. Where existing debt is being refinanced, pursuant to section 1103A(a)(5) of the Act, the amount of new Obligations issued in respect to such existing debt may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) Seventy-five or 87½ percent whichever is applicable, of the Depreciated Actual Cost of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology construction costs such as designing, engineering, constructing (including performance bond premiums approved by the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually

specified in Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology construction contracts, e.g., changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid on subordinated debt considered to be Equity, and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. Recognizing the importance that the payment of commissions plays in the export market, commissions (which represent a portion of the total shipyard contract price) may be included in the foreign equipment and services amount of the Actual Cost of an export project, provided:

A majority of the work done by the parties receiving the commissions is in the form of design and engineering work, and

The commissions represent a small amount of the total contract price. In addition, Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act shall be included in the items of Actual Cost. In approving Actual Cost the Secretary will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Federal documentary tax stamps;

(8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;

(9) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;

(10) The cost of the condition survey required by § 298.11(d) of this part and all work necessary to meet the standards set forth therein;

(11) The cost to the Shipowner of a Vessel which is to be reconstructed or reconditioned, e.g., cost of acquisition or repair work;

(12) Generally not include any amount payable to the shipyard for early delivery of the Vessel;

(13) Generally not include any amount payable to the manufacturer of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology for early delivery of the equipment to the General Shipyard Facility;

(14) Predelivery Advanced Shipbuilding Technology or Modern Shipbuilding Technology expenses which may not be properly capitalized by the General Shipyard Facility as costs of the technology under Generally Accepted Accounting Principles; and

(15) The cost of major foreign components and other foreign components for which there is no waiver and their assembly when comprising any part of the hull and superstructure of a Vessel.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34 of this part), and prior to the final Actual Cost determination for each Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology, the applicant shall submit to the Secretary documents substantiating all claimed costs eligible under § 298.21(b) or, alternatively, appropriate certification of such costs by an agent approved by the Secretary. These documents may include but need not be limited to copies of invoices, change orders, subcontracts, and where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions contained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by the Secretary. The Secretary must subsequently approve the amount of escalation claimed by the applicant as Actual Cost.

(f) *Moneys received in respect of construction.* If the Obligor or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect to construction of a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, the Obligor shall give written notice of such fact to the Secretary. So long as the Guarantees have not been paid by the Secretary, the Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology owner of liquidated damages for late delivery of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology. If the Secretary shall have paid the Guarantees, the Obligor or other recipient shall promptly pay these moneys including any liquidated damages to the Secretary for deposit into the Federal Ship Financing Fund.

(g) *Depreciated Actual Cost.* After a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology.

§ 298.22 Amortization of Obligations.

Generally after Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in

amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(a) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity;

(b) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

(c) With regard to Eligible Export Vessels, in accordance with such other terms as the Secretary determines to be more favorable and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels or Advanced or Modern Shipbuilding Technology and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Sections 1104(a) (1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel or Advanced or Modern Shipbuilding Technology, the proceeds of such Obligations shall be applied to the construction, reconstruction or reconditioning of other Vessels or Advanced or Modern Shipbuilding Technology or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) or Advanced or Modern Shipbuilding Technology is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in subpart B of this part, including economic soundness, as may be necessary. Refinancing of Title XI debt only shall be permitted for Advanced or Modern Shipbuilding Technology.

§ 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction, or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

§ 298.25 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligee of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as interest in excess of the rate approved by the Secretary; or

(b) Grants of security to an Obligee in addition to the Guarantees.

§ 298.26 Lease payments.

If payment of principal and interest on Obligations would in any way be dependent upon the lease or charter hire payments for a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology that is security for the Obligations, the amount and conditions of lease or charter payments shall be subject to the Secretary's approval.

§ 298.27 Advances.

(a) *In general.* In accordance with the provisions of section 207 and Title XI of the Act, the Secretary shall have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to, principal, interest, insurance and other vessel-related expenses or fees. Such advances or payments shall be made only to protect, preserve or improve the collateral held as security by the Secretary to secure Title XI debt. The applicant making the request for an advance shall demonstrate (with market and cash flow analysis and other projections) that its problems are of a short term duration (less than two years); with the help of an advance(s), the applicant would be assisted over its temporary difficulties; and there is adequate collateral for the advance.

(b) *Filing requirements.* Any company that desires to request an advance or other payment, or a commitment to make an advance or other payment from the Secretary for the purposes stated in § 298.27 of this part, shall apply for such assistance as far in advance as is reasonably possible. A request for an advance for principal and interest payments shall be received by the Secretary at least 30 days prior to the initial payment date. A request for an advance of insurance payments shall be received by the Secretary at least 30 days prior to a renewal or termination date. The Secretary may consider requests for assistance with less notice, upon written documentation of extenuating circumstances. Any requests for assistance must be accompanied by supporting data with respect to the need for the advance, that financing assistance has been sought from other sources, that the company is taking and has taken measures to alleviate its situation, financial projections, proposed term of the repayment, current and projected market conditions, information on other available collateral, liens and other creditor information, and any other information which may be requested by the Secretary.

Subpart D—Documentation

§ 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper shall include on its face the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Guarantee of the United States, authenticated by the Indenture Trustee. If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to, time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

§ 298.31 Mortgage.

(a) *In general.* (1) Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of a Mortgage in one or more Vessels or a Mortgage or other security interest in

the Advanced Shipbuilding Technology or Modern Shipbuilding Technology (the ''Technologies''), in favor of the Secretary. During construction of a new Vessel or any of the Technologies, a security interest may be perfected by a filing under the Uniform Commercial Code.

(2) In order to ensure that the Secretary's Mortgages or other security interests are valid and enforceable, the Secretary shall require that the Obligor obtain legal opinions, in form and substance satisfactory to the Secretary, from independent, outside legal counsel satisfactory to the Secretary, including foreign independent outside legal Counsel with respect to Eligible Export Vessels, which opinions shall state, among other things, that the Mortgage or other security interest(s) are valid and enforceable:

(i) In the country in which the Vessel is documented (or, in the case of a security interest, in jurisdictions acceptable to the Secretary);

(ii) In the United States; and

(iii) For vessels operating on specified trade routes, in the country or countries involved in this service, unless the Secretary determines that those destinations are too numerous, in which case, the Secretary will instead require an opinion of foreign validity and enforceability in the Vessel's primary port of operation.

(3) In the case where a Mortgage or security interest on the financed assets may not be available or enforceable, the Secretary shall require alternative forms of security.

(4) The Security Agreement shall provide that upon delivery of a new Vessel or upon final installation of the Technologies, or at the time Guarantees are issued with respect to an existing Vessel or the Technologies, a Mortgage on the Vessel and a Mortgage or other security interest on the Technologies shall be executed in favor of the Secretary, unless the Secretary determines that a Mortgage or a security interest is not required in accordance with the preceding sentence.

(5) The Mortgage shall be filed with the United States Coast Guard at the Vessel's port of record, or with the proper foreign authorities with respect to an Eligible Export Vessel, and with respect to assets of a General Shipyard Facility a Mortgage and security interest shall be filed with the proper authorities within the appropriate state and shall be delivered to the Secretary after being recorded.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels (Fleet Mortgage) shall be executed, perfected and delivered to the Secretary by the Obligor. If the Fleet Mortgage relates to undelivered Vessels, the Fleet Mortgage shall be executed upon delivery of the first vessel. At the time of each subsequent Vessel delivery, the Obligor shall execute a supplement to the Fleet Mortgage which makes that Vessel subject to the Secretary's Mortgage lien. The Fleet Mortgage shall provide that payment by the Obligor of the entire amount of Obligations covered or to be covered by Guarantees shall be required to discharge the Fleet Mortgage, regardless of the amount of the Secretary's Note or Notes issued and outstanding at the time of execution and delivery of the Fleet Mortgage or the number of Vessels covered by the Fleet Mortgage. The discharge date of the Fleet Mortgage shall be the maturity date of the Secretary's Note. The Secretary may require, as authorized by section 1104(c)(2) of the Act, such payments of principal prior to maturity (redemptions), with respect to all related Obligations, as deemed necessary to maintain adequate security for the Guarantees. Each Fleet Mortgage shall provide that in the event of constructive total loss, requisition of title or sale of any Vessel covered by the Fleet Mortgage, indebtedness represented by the Obligations shall be paid, unless the Secretary shall otherwise determine that there remains adequate security for the Guarantees, and the Vessel shall be discharged from the Mortgage lien.

(c) *Adequacy of collateral.* Under normal circumstances, a First Preferred Mortgage on the Vessel(s) or Advanced or Modern Shipbuilding Technology will be adequate security for the Guarantees. If, however, the Secretary determines that the Mortgage on the Vessel(s) or Advanced or Modern Shipbuilding Technology is not sufficient to provide adequate security, the Secretary, as a condition to approving the Letter Commitment or processing the application may require additional collateral, such as a mortgage(s) on other vessel(s) or Advanced or Modern Shipbuilding Technology or on other assets, special escrow funds, pledges of stock, charters, contracts, notes, letters of credit, accounts receivable assignments, and guarantees.

§ 298.32 Required provisions in documentation.

(a) *Performance under shipyard and related contracts.* Generally, shipyard and related contracts shall contain provisions for:

(1) Furnishing by the shipyard or manufacturer of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology of satisfactory insurance and a satisfactory performance bond where Obligations are issued during the construction period, except that if the shipyard or manufacturer of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology demonstrates to the satisfaction of the Secretary that it has sufficient financial resources and operational capacity to complete the project, posting of a bond will not be required;

(2) Allowing access to the Vessel or Advanced or Modern Shipbuilding Technology, as well as all related work projects being performed by the contractor and subcontractors, to a representative of the Secretary, at all reasonable times, to inspect performance of the work and to observe trials and other tests for the purpose of determining that the Vessel or Advanced or Modern Shipbuilding Technology is being constructed, reconstructed or reconditioned in accordance with contract plans and specifications approved by the Secretary;

(3) Submitting to the Secretary, upon request, one set of shipyard plans, in form and substance satisfactory to the Secretary, for the Vessel or Advanced or Modern Shipbuilding Technology as built;

(4) Making periodic payments for the work in accordance with an agreed schedule, submitted by the shipyard in a form acceptable to the Secretary, based on percentage of completion, after such percentage and satisfactory performance are certified by the Obligor, shipyard and a representative of the Secretary as to each payment;

(5) Prohibiting the use of proceeds from the sale of Obligations for the payment of work performed outside the shipyard, unless the Secretary consents in writing to such use; and

(6) Requiring that all components of the hull and superstructure of a U.S.-documented Vessel and an Eligible Export Vessel shall be assembled in the United States. If obligations will not be issued during the period of construction of a Vessel, shipyard-related contracts shall generally include the provisions specified in paragraphs (a)(2) and (a)(3) of this section and this paragraph (a)(6).

(b) *Assignments and general covenants from Obligor to Secretary.* The Obligor shall assign rights and shall covenant with the Secretary, as required by the Secretary, including, but not limited to, the following:

(1) Assignment of all or part of the right, title and interest under the construction contract and related contracts, except those rights expressly reserved therein by the Obligor relating to such things as patent infringement and liquidated damages;

(2) Assignment of rights to receive all moneys which from time to time become due with respect to Vessel or Advanced or Modern Shipbuilding Technology construction;

(3) Assignment, where applicable, of all or a part of the bareboat charter, time charter, contracts of affreightment or other agreements relating to the use of the Vessel or Advanced or Modern Shipbuilding Technology and all hire payable to the Obligor, and delivery to the Secretary of required consents by appropriate parties to any such assignments;

(4) Covenants relating to the annual filing of satisfactory evidence of continuing United States citizenship, in accordance with 46 CFR part 355, with the exception of Eligible Export Vessels and shipyards with Advanced or Modern Shipbuilding Technology projects; warranty of Vessel or Advanced or Modern Shipbuilding Technology title free from all liens other than those specifically excepted; maintaining United States documentation of the Vessel or documentation under the laws of a country other than the United States with regard to an Eligible Export Vessel; compliance with the provisions of 46 U.S.C. 31301–31343, except that Eligible Export Vessels shall comply with the definition of a ''preferred mortgage'' in 46 U.S.C. 31301(6)(B), requiring, among other things, that the Mortgage shall comply with the mortgage laws of the foreign country where the Vessel is documented and shall have been registered under those laws in a public register; Notice of Mortgage, payment of all taxes (except if being contested in good faith); annual financial statements audited by independent certified or independent licensed public accountant.

(5) Covenants to keep records of construction costs paid by or for the Obligor's account and to furnish the Secretary with a detailed statement of those costs, distinguishing between:

(i) Items paid or obligated to be paid, attested to by independent certified public accountants unless otherwise verified by the Secretary; and

(ii) Costs of American and foreign materials (including services) in the hull and superstructure.

(6) Covenants to maintain Marine and War Risk Hull and Machinery insurance on the Vessel or Eligible Export Vessel in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the Vessel or Eligible Export Vessel, whichever is greater; Marine and War Risk Protection and Indemnity insurance; Interim War Risk Binders for Hull and Machinery, and Protection and Indemnity coverages underwritten by the Maritime Administration as authorized by Title XII of the Act; and such additional insurance as may be required by the Secretary. All insurance required to be maintained shall be placed with the United States Government and American and/or British (and/or other foreign, if permitted by the Secretary by prior written notice) insurance companies, underwriters' associations or underwriting funds approved by the Secretary through marine insurance brokers and/or underwriting agents approved by the Secretary. All insurance required to be maintained shall be placed under the latest (at the time of issue) forms of American Institute of Marine Underwriters policies approved by the Secretary and/or under such other forms of policies which the Secretary may approve in writing and/or policies issued by or for the Maritime Administration insuring the Vessel or Eligible Export Vessel against the usual risks provided for under such forms, including such amounts of increase value other forms of ''total loss only'' insurance permitted by the Hull and Machinery insurance policies;

(7) Collateralize other debt due to the Secretary under other Title XI financings;

(8) Covenants to maintain shipyard insurance on the Advanced Shipbuilding Technology or Modern Shipbuilding Technology in an amount equal to 110% of the outstanding Obligations or up to the full commercial value of the technology, whichever is greater, and such additional insurance as may be required by the Secretary; and

(9) Covenants to maintain additional types of insurance as may be required by the Secretary with respect to Eligible Export Vessels, i.e. political risk insurance, to cover such items as the political, financial, and/or economic risk in a foreign country.

§ 298.33 Escrow fund.

(a) *Circumstances requiring deposits.* The Obligor may be required to establish a fund with the Secretary (Escrow Fund) in accordance with section 1108(a) of the Act and the Security Agreement. The deposit with the Secretary shall be in cash or Federal Reserve Bank funds.

(b) *Principal Deposit-Single Vessel or Advanced or Modern Shipbuilding Technology.* If a single Vessel or Advanced or Modern Shipbuilding Technology is security for the Guarantees, the deposit of principal shall be calculated by subtracting from the aggregate principal amount of the Obligations sold, 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of the deposit, by or for the account of the Obligor for construction, reconstruction or reconditioning of the Vessel or Advanced or Modern Shipbuilding Technology. In the event that Obligations are issued and sold on a date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations.

(c) *Principal deposit—multiple Vessels or Advanced or Modern Shipbuilding Technology.* If multiple Vessels or Advanced or Modern Shipbuilding Technology are security for the Guarantees, with the Secretary's approval, the Obligor may calculate the aggregate deposit of principal amount in the Escrow Fund by computing on an individual Vessel or Advanced or Modern Shipbuilding Technology basis by prorating the proceeds of the sale of Obligations, within the meaning of the proviso in section 1108(a) of the Act, based on the ratio of the Vessel's Actual Cost or Depreciated Actual Cost, to the total Actual Cost and Depreciated Actual Cost of all Vessels or Advanced or Modern Shipbuilding Technology which are security for the Guarantees less 75 or 87½ percent (whichever is applicable under section 1104(b)(2) of the Act) of the amount of Actual Cost or Depreciated Actual Cost determined by the Secretary to have been paid, as of the date of deposit, by or for the account of the Obligor for the construction, reconstruction or reconditioning of the Vessel or Advanced or Modern Shipbuilding Technology for which the deposit is being computed or by allocating portions of the proceeds (up to 75 or 87½ percent, whichever is applicable under section 1104(b) of the Act) from the sale of the Obligations to specific Vessels or Advanced or Modern Shipbuilding Technology and computing the deposit based on the Actual Cost or Depreciated Actual Cost of such Vessels or Advanced or Modern Shipbuilding Technology paid, as of the date of deposit, by or for the account of the Obligor. In the event that Obligations are issued and sold on a

date subsequent to the initial issuance and sale of Obligations, a deposit shall be calculated in the same manner as for the first sale of Obligations. The foregoing allocations are for the purpose of calculating the deposits only and are not applicable or controlling with respect to disbursements from the Escrow Fund.

(d) *Interest deposit.* Interest on the aggregate principal amount deposited pursuant to paragraphs (b) and (c) of this section, shall be computed at the same rate borne by the Obligations, for one interest payment period, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit. If the Obligations issued and sold bear more than one rate of interest, the amount of interest required to be deposited shall be based upon the weighted average of such interest rates. The calculation of the amount of interest to be deposited shall take into account the principal and interest, if any, remaining on deposit in the Escrow Fund.

(e) *Disbursements prior to Termination Date.* Unless the Guarantees shall become payable prior to the Termination Date (described in paragraph (h) of this section) of the Escrow Fund, the Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, and within a reasonable time after written request from the Obligor, make disbursements from the fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel or Advanced or Modern Shipbuilding Technology delivery or redelivery, and to the shipbuilder, the Obligor or to any other Person entitled thereto, with respect to costs included in Actual Cost. Also, the Secretary may disburse to the Obligor, upon request made at least 10 business days prior to, and no later than 30 days after the date on which the payment of interest on the Obligations is due, any excess, as determined by the Secretary, of required interest on deposit in the Escrow Fund on the date of disbursement. However, no payment or reimbursement shall be made from the Escrow Fund to any Person until:

(1) The Construction Fund (described in § 298.34 of this part), where provided for in the Security Agreement, has been exhausted;

(2) At least 12½ or 25 percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology for which the disbursement is requested has been paid by or for the account of the Obligor from sources other than the proceeds of the Obligations, except that where the Obligor is required to pay in 25 percent of the Actual Cost or Depreciated Actual Cost, and demonstrates to the Secretary's satisfaction the ability to pay in such 25 percent, after the Obligor has paid the first 12½ percent of the Actual Cost or Depreciated Actual Cost, the Obligor may be permitted to withdraw moneys from the Escrow Fund, for payment of the next 37½ percent of such Actual Cost or Depreciated Actual Cost, and withdraw the remainder of the Escrow Fund moneys after paying in the next 12½ percent of Actual Cost or Depreciated Actual Cost; and

(3) The Secretary has approved the Actual Cost items and has determined that the amounts for which reimbursement is requested have been paid and that there has been satisfactory certification as to the percentage of completion of the Vessel or Vessels or Advanced or Modern Shipbuilding Technology, at least equal to that amount of Actual Cost paid, except where the Secretary has specifically consented to an alternative procedure.

(f) *Where Guarantees become payable.* If, prior to the Termination Date of the Escrow Fund, the Guarantees shall become payable by the Secretary, all amounts in the Escrow Fund at such time (including interest and realized income which have not yet been paid to the Obligor) shall be paid into the Federal Ship Financing Fund, created by section 1102 of the Act, and be credited against any amounts due or to become due to the Secretary from the Obligor with respect to all Guarantees, and to the extent not so required, be paid to the Obligor.

(g) *Requisition of title, termination of construction contract or total loss of Vessel or Advanced or Modern Shipbuilding Technology.* In the event of requisition of title to or seizure or forfeiture of the Vessel or Advanced or Modern Shipbuilding Technology, termination of the construction contract (unless the Obligor and the Secretary elect to have the Vessel or Advanced or Modern Shipbuilding Technology completed) or the construction-differential subsidy contract (where applicable), or the actual or constructive total loss of the Vessel or Advanced or Modern Shipbuilding Technology, all moneys remaining on deposit in the Escrow Fund may be disbursed by the Secretary for any of the following purposes:

(1) Redemption or payment of Obligations and accrued interest thereon to the date of redemption or payment, in accordance with the applicable provisions of the Documentation relating to such redemption or payment, where there is no existing default;

(2) Payment to the Obligor, if all outstanding Obligations are retired and paid other than by payment of the Guarantees, and all amounts payable to the Secretary and secured by the Mortgage have been paid; and

(3) Payment in accordance with the priorities set forth in § 298.41 of this part, if a default has occurred and if the Secretary shall have paid the Guarantees.

(h) *Disbursement upon Termination Date.* The Escrow Fund shall terminate on a date agreed upon by the Obligor and the Secretary as set forth in the Security Agreement (Termination Date). If on such Termination Date the full amount of Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology has not been paid by or for the account of the Obligor, or is not then due and payable, the Obligor and the Secretary may extend the Termination Date by agreement. When the Secretary makes a final determination of Actual Cost at the written request of the Obligor, or at the instance of the Secretary if the Termination Date has occurred without such a request, the Termination Date shall be deemed to be the date of such final determination of Actual Cost. If payments under the Guarantees have not become due prior to the Termination Date, then on or immediately after said Termination Date, any balance in the Escrow Fund shall be disbursed by the Secretary in the following manner:

(1) Where the principal amount of the Obligations issued less the principal amount of Obligations which have been retired or paid on or before such Termination Date, and not availed of as a credit against any mandatory redemptions otherwise required to be made on or before such Termination Date, shall be in excess of 75 or 87½ percent (whichever is applicable) of the Actual Cost or Depreciated Actual Cost of the Vessel or Advanced or Modern Shipbuilding Technology as finally determined by the Secretary as of the Termination Date, the Secretary shall pay such excess to the Indenture Trustee in accordance with the provisions of the Documentation relating to such payment. A written notice from the Secretary and the Obligor shall accompany such payment, stating the Termination Date and directing the Indenture Trustee to redeem an equal amount of Obligations;

(2) From the balance remaining after the deduction of the principal amount of the Obligations to be redeemed, an amount equal to interest accrued to the

date fixed for redemption of the principal amount of Obligations to be redeemed shall be simultaneously paid from the Escrow Fund by the Secretary to the Indenture Trustee to be applied to the payment of interest to the date to be fixed for redemption. In the event the balance remaining in the Escrow Fund, after giving effect to paragraph (h)(1) of this section, is insufficient to pay the interest accrued to the date fixed for redemption, such balance shall be paid from the Escrow Fund to the Indenture Trustee and the Obligor shall simultaneously deposit with the Indenture Trustee an amount equal to the difference between the balance being paid to the Indenture Trustee from the Escrow Fund and the total amount required for the payment of accrued interest; and

(3) Any balance of the Escrow Fund shall be paid to the Obligor.

(i) *Investment and liquidation of the Escrow Fund.* The Secretary may invest and reinvest deposits to the Escrow Fund in securities which are obligations of the United States and with maturities such that sufficient cash will be reasonably available to the Escrow Fund as required to make periodic authorized disbursements. The Secretary shall deposit the Escrow Fund into a special Treasury Department account with instructions, pursuant to an agreement with the Obligor, for the investment, reinvestment and liquidation of the Escrow Fund.

(j) *Income Earned on the Escrow Fund.* If the Guarantees shall not have become due, after receiving notice that the Treasury Department has deposited income earned on the Escrow Fund into the special account, the Secretary shall direct the payment of such income to the Obligor. Income shall include the excess of the cash received from the sale of securities or the payment of securities at maturity (less any losses from the sale of securities not made up by payments by the Obligor pursuant to provisions of the Security Agreement) over the cost thereof, and interest received with respect to the securities.

(k) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Escrow Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Escrow Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Escrow Fund.

§ 298.34 Construction fund.

(a) *Deposit.* Where the Security Agreement provides for an Escrow Fund deposit, usually a provision shall also be included therein for establishing Construction Fund deposits. Under the terms of this provision, at the time of each sale of Obligations the Obligor shall deposit with a Depository, in a special account subject to the joint control of the Obligor and the Secretary, cash equal to the principal amount of the Obligations issued at such time less the sum of the aggregate principal amount then required to be in the Escrow Fund and the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e) of this part) which the Secretary determines has been paid by or for the account of the Obligor. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund directly to the Indenture Trustee or any Paying Agent for the payment of interest on the Obligations, for periods prior to Vessel or Advanced or Modern Shipbuilding Technology delivery, and to the shipbuilder, the Obligor, or to any other Person entitled thereto with respect to costs included in Actual Cost. The Secretary shall not authorize any disbursement from the Construction Fund unless payments have been made by or for the account of the Obligor from sources other than the Obligations, in accordance with the requirements of paragraphs (e) (2) and (3) of § 298.33.

(c) *Redeposit.* If, at any time, the Secretary shall have determined that there has been an improper disbursement from the Construction Fund, the Secretary shall give written notice to the Obligor of the amount improperly disbursed, the amount to be redeposited into the Construction Fund on account thereof and the reasons for such determination. The Obligor shall thereafter promptly redeposit such amount into the Construction Fund.

§ 298.35 Reserve Fund and Financial Agreement.

(a) *Purpose.* In order to provide further security to the Secretary and to insure payment of the interest and principal due on the Obligations, the Company shall be required to enter into a Title XI Reserve Fund and Financial Agreement (Agreement) at the first Closing at which Obligations are issued. The Secretary may waive or modify provisions of the Agreement based on an evaluation of the aggregate security for the Guarantees.

(b) *Financial Covenants for Companies meeting primary financial requirements.* Covenants shall be imposed on the Company which is subject to compliance with the primary financial requirements at Closing, set forth in § 298.13(d), as follows:

(1) *Continuous covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Enter into a service, management or operating agreement with respect to a Vessel or Advanced or Modern Shipbuilding Technology financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to a Related Party under any form of charter or contract,

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in new business activities not directly connected with marine operations or guarantee (or otherwise be liable for) debts of other Persons.

(iv) Pay any dividend except as may be permitted by paragraph (b)(1)(iv) (A) or (B) of this section. If the Company is party to an operating-differential subsidy contract, the payment of dividends is subject to the provisions of § 298.35(g).

(v) Sell, transfer, or lease any Modern or Advanced Shipbuilding Technology financed with the assistance of Title XI guarantees or transfer such technology to a Related Party under any form of contract.

(A) From retained earnings in an amount specified in paragraph (b)(1)(iv)(C) of this section providing that the year in which the dividend is paid there is no operating loss in the current fiscal year to the date of the payment of the dividend and

(*1*) There was no operating loss in the immediate preceding three fiscal years, or

(*2*) There was a one year operating loss during the immediate preceding three fiscal years and

(*i*) Such loss was not in the immediate preceding fiscal year, and

(*ii*) There was positive net income for the three year period.

(B) If dividends are not payable under paragraph (b)(1)(iv)(A) of this section, a

dividend can be paid in an amount equal to the total operating net income for the immediate preceding three fiscal year period provided that

(*1*) There were no two successive years of losses,

(*2*) In the year in which the dividend is paid there is no operating loss in such fiscal year to the date of payment of the dividend, and

(*3*) The dividend paid would not exceed an amount specified in paragraph (b)(1)(iv)(C) of this section.

(C) Dividends may be paid from earnings of prior years in an aggregate amount equal to:

(*1*) 40 percent of the Company's total net income after tax for each of the prior years, less any dividends that were paid in such years; or

(*2*) The aggregate of the Company's total net income after tax for such prior years, providing that after the payment of such dividend, the Company's long term debt does not exceed its net worth. In computing net income extraordinary gains, such as gains from the sale of assets, etc., shall be excluded.

(2) *Additional Covenants which may become applicable.* If the Company shall at any time no longer satisfy the primary financial requirements, or such condition would occur after giving effect to any of the proposed transactions set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, covert capital into debt, make distributions, or pay any dividends, provided, however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by § 298.35(g);

(ii) Make loans, advances, investments in or repayments of existing debts to a Related Party, stockholders, officers or directors;

(iii) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified by the Secretary in the Agreement;

(iv) Pay salaries in excess of amounts specified in the Agreement, pay subordinated indebtedness or make loans; or

(v) Invest in securities other than those that qualify as eligible investments under the Agreement.

(c) *Financial Covenants for Companies meeting the special financial requirements.* Covenants shall be imposed on the Company which is subject to the special financial requirements at Closing, set forth in § 298.13(e), as follows:

(1) *Continuous covenants.* So long as the Guarantees are in effect the Company shall not, without the prior written consent of the Secretary, undertake any actions, prohibited by the Documentation, which actions include but are not limited to those of the following nature.

(i) Enter into a service, management or operating agreement for a Vessel or Advanced or Modern Shipbuilding Technology financed with the assistance of Title XI Guarantees;

(ii) Sell, transfer or demise charter the Vessel or transfer the Vessel to a Related Party under any form of Charter or Contract.

(iii) Sell or transfer a substantial part of its assets, enter into a merger or consolidation, engage in any new business activities not directly connected with marine operations or guarantee (or otherwise become liable for) debts of other Persons;

(iv) Incur indebtedness or become subject to any liens (except if necessary in the ordinary course of existing business); acquire fixed assets or become liable (directly or indirectly) under charters or leases (having a term of six months or more) for the payment of charter hire or rent on all such charters or leases which have annual payments aggregating in excess of an amount specified for the Secretary in the Agreement;

(v) Make any loans or invest in any securities other than Eligible Investments for Title XI Reserve Fund;

(vi) Pay any subordinated indebtedness other than in accordance with a subordination agreement approved by the Secretary; or

(vii) Sell, transfer, or lease any Advanced or Modern Shipbuilding Technology financed with the assistance of Title XI guarantees or transfer such technology to a Related Party under any form of contract.

(2) *Additional covenants which may become applicable.* If the Company shall at any time no longer satisfy the special financial requirement (after including the annual financial liability relating to the Obligations as a current liability in computing Working Capital), or such condition would occur after giving effect to any proposed transaction set forth below, the Company shall not, without the prior written consent of the Secretary, undertake any actions prohibited by the Documentation, which actions include but are not limited to those of the following nature:

(i) Withdraw or redeem capital, convert capital into debt, make distributions, or pay any dividend, provided however, if the Company is subject to an operating-differential subsidy contract, the dividend restriction shall be governed by § 298.35(g);

(ii) Make loans, advances, investments or prepayments of existing debts to a Related Party, stockholders, officers or directors, or invest in the securities of any Related Party; or

(iii) Pay salaries in excess of amounts specified in the Agreement.

(3) Covenants where Company's financial condition improves to meet primary financial requirements. Whenever the Company, based on a review of its financial position, determines that it meets the primary financial requirements set forth in § 298.13(d), it may inform the Secretary of this fact, and submit such financial statements and all additional information which the Secretary shall consider necessary to verify compliance with such financial requirements. With the consent of the Secretary, the Company may elect thereafter to be subject to covenants applicable to a Company which had satisfied the primary financial requirements at Closing.

(d) *Title XI Reserve Fund Net Income.* The Agreement shall provide that within 105 days after the end of its accounting year, the Company shall compute its net income attributable to the operation of one or more Vessels that were constructed, reconstructed, reconditioned or refinanced with Title XI financing assistance (Title XI Reserve Fund Net Income). The computation utilizes a ratio expressed as a percentage, and applies this percentage to the Company's total net income after taxes. The numerator of the ratio shall be the total original capitalized cost of all Company Vessels (whether leased or owned) which were constructed, reconstructed, reconditioned or refinanced with the assistance of Guarantees. The denominator shall be the total original capitalized cost of all the Company's fixed assets. In the case of Advanced or Modern Shipbuilding Technology, the Agreement shall provide that within 105 days after the end of its accounting year, the Company shall submit its audited financial statements showing its net cash flow in a manner acceptable to the Secretary, in lieu of any other computation of Reserve

Fund Net Income specified herein for Vessels. The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(1) The depreciation expense applicable to the accounting year shall be added back.

(2) There shall be subtracted:

(i) An amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company (other than from the Title XI Reserve Fund) during the year; and

(ii) The principal amount of Obligations retired or paid (as defined in the Security Agreement), prepaid or redeemed, in excess of the required redemptions or payments which may be used by the Company as a credit against future required redemptions or other required payments with respect to the Obligations.

(e) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the primary financial requirements set forth in § 298.13(d), the Company shall make one or more deposits to a special joint depository account with the Secretary (the Title XI Reserve Fund) to be established pursuant to an agreement in writing (Depository Agreement) at the time the first deposit is required to be made. The amount of deposit as to any year, or period less than a full year, where applicable, shall be determined as follows:

(1) If the Company is the owner of the Vessel or Advanced or Modern Shipbuilding Technology, an amount (pro rated for a period of less than a full year) that is equal to 10 percent of the Company's aggregate original equity investment in the Vessel or Vessels or Advanced or Modern Shipbuilding Technology shall be deducted from Title XI Reserve Fund Net Income.

(2) Fifty percent of the Title XI Reserve Fund Net Income adjusted where applicable, in accordance with paragraph (e)(1) of this section shall be deposited into the Title XI Reserve Fund.

(3) There shall also be deposited any additional amounts that may be required, pursuant to provisions of the Security Agreement or any other agreement in the documentation to which the Company is a party.

(4) Irrespective of the Company's deposit requirement, as stated in preceding paragraphs (e) (1) through (3) of this section, the Company shall not be required to make any deposits into the Title XI Reserve Fund if any of the following events shall have occurred:

(i) The Company shall have discharged the Obligations and related Secretary's Note and shall have paid other sums secured under the Security Agreement and Preferred Mortgage;

(ii) All Guarantees with respect to outstanding Obligations shall have terminated pursuant to the provisions of the Security Agreements, other than by reason of payment of the Guarantees; or

(iii) The amount in the Title XI Reserve Fund, (including any securities at market value), is equal to, or in excess of 50 percent of the principal amount of outstanding Obligations.

(5) In the case of Advanced or Modern Shipbuilding Technology, unless the shipyard as of the close of its accounting year was subject to and in compliance with the primary financial requirements, the shipyard shall make a deposit at two percent of its net cash flow, as defined by GAAP, and as shown on its audited financial statements.

(f) *Fund in lieu of Title XI Reserve Fund.* If the Company has established a Capital Construction Fund (CCF), pursuant to section 607 of the Act, whether interim or permanent, at any time when a deposit would otherwise be required to be made into the Title XI Reserve Fund, and the Company elects to make such deposits to the CCF, the Company shall enter into an agreement, satisfactory to the Secretary, providing that all such deposits of assets therein shall be security (CCF Security Amount) to the United States in lieu of the Title XI Reserve Fund. The deposit requirements of the Title XI Reserve Fund and Financial Agreement shall be deemed satisfied by deposits of equal amounts in the CCF, and withdrawal of the CCF Security Amount shall be subject to the Secretary's prior written consent. If, for any reason, the CCF terminates prior to the payment of the Obligations, the Secretary's Note and all other amounts due under or secured by the Security Agreement or Mortgage, the CCF Security Amount shall be deposited or redeposited in the Title XI Reserve Fund.

(g) *Dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract.* [Reserved]

§ 298.36 Annual Guarantee Fee.

(a) *Rates in general.* For annual periods, beginning with the date of the Security Agreement and prior to the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology, the Secretary shall charge the Obligor an annual fee (Guarantee Fee) at a rate of not less than ¼ of 1 percent and not more than ½ of 1 percent of the excess of the average principal amount of the Obligations estimated to be outstanding during the annual period covered by said Guarantee Fee over the average principal amount, if any, on deposit in the Escrow Fund during said annual period (Average Principal Amount of Obligations Outstanding). For annual periods beginning with the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology, the Guarantee Fee shall be imposed at an annual rate of not less than ½ of 1 percent and not more than 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee. The Obligor shall be responsible for payment of the Guarantee Fee.

(b) *Rate calculation.* The Guarantee Fee rate generally shall vary inversely with the ratio of Equity to Long Term Debt of the Person considered by the Secretary to be the primary source of credit in the transaction (Credit Source), e.g., the long term time charterer (where the charter hire represents the source of payment of interest and principal with respect to the Obligations), the guarantor of the Obligations, Obligor or the bareboat charterer. Where the ratio of Equity to Long Term Debt (Variable Rate) is used, the Secretary may make such adjustments to the computation of Equity and Long Term Debt considered necessary to reflect more accurately the financial condition of the Credit Source. The determination of Equity and Long Term Debt shall be based on information contained in forms or statements on file with the Secretary prior to the date on which the Guarantee Fee is to be paid. With the consent of the Secretary, there shall be included in equity, but excluded from Long Term Debt, any subordinated indebtedness representing loans to the credit source, evidence of which has been delivered to the Secretary. The Secretary may establish a fixed rate or other method of calculation of the Guarantee Fee, upon an evaluation of the aggregate security for the Guarantees.

(c) *Variable Rate prior to Vessel or Advanced or Modern Shipbuilding Technology delivery.* For annual periods beginning prior to the delivery date of a Vessel or Advanced or Modern Shipbuilding Technology being constructed, reconstructed, or reconditioned, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅜ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is equal to or exceeds the Long Term Debt, the annual Guarantee Fee rate shall be ¼ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(d) *Variable Rate after Vessel or Advanced or Modern Shipbuilding Technology delivery.* For annual periods beginning on or after the Vessel or Advanced or Modern Shipbuilding Technology delivery date, the Guarantee Fee shall be determined as follows:

(1) If the Equity is less than 15 percent of the Long Term Debt, the annual Guarantee Fee rate shall be 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(2) If the Equity is at least 15 percent of the Long Term Debt but less than 60 percent of the Long Term Debt, the annual Guarantee Fee rate shall be ¾ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(3) If the Equity is at least 60 percent of the Long Term Debt, but less than the Long Term Debt, the annual Guarantee Fee rate shall be ⅝ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(4) If the Equity shall equal or exceed the Long Term Debt, the Guarantee Fee rate shall be ½ of 1 percent of the Average Principal Amount of Obligations Outstanding during the annual period covered by the Guarantee Fee.

(e) *Payment of Guarantee Fee.* The Guarantee Fee covering the full period of the stated maturity of the Obligations commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The project's entire Guarantee Fee payment shall be made by the Obligor to the Secretary in an amount equal to the sum of the present value of the separate products obtained by applying the Guarantee Fee rate to the projected amount of the Obligations Outstanding for each year of the stated maturity of the Obligations. In calculating the present value used in determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board quarterly rates. Under no circumstances will the Secretary refund the Guarantee Fee to the Obligor. A Guarantee Fee paid pursuant to this section may be included in Actual Cost and is eligible to be financed.

(f) *Proration of Guarantee Fee.* The Guarantee Fee shall be prorated where a Vessel delivery is scheduled to occur during the annual period with respect to which payment of said Guarantee Fee is being made, as follows:

(1) *Undelivered Vessel.* If the Guarantee Fee relates to an undelivered Vessel, the predelivery rate is applicable to the Average Principal Amount of Obligations Outstanding for the period from the date of the Security Agreement to the delivery date, and the delivered Vessel rate is applicable for the balance of the annual period in which the delivery occurs.

(2) *Multiple Vessels.* If the Guarantee Fee relates to more than one Vessel, the amount of outstanding Obligations shall be allocated to each Vessel in the manner prescribed in § 298.33(d), and an amount shall be determined for each Vessel by using the rate that is applicable under paragraph (c) or (d) of this section and the proration as set forth above. The Guarantee Fee shall be the aggregate of the amounts calculated for each Vessel.

§ 298.37 Examination and audit.

The Secretary shall have the right to examine and audit the books, records (including original logs, cargo manifests and similar records) and books of account, which pertain directly to the project, of the Obligor, bareboat charterer, time charterer or any other Person who has control of or a financial interest in a Vessel or Advanced or Modern Shipbuilding Technology, as well as records of a Related Party and domestic agents connected with such Persons, and shall have full, free and complete access thereto at all reasonable times. Also, the Secretary shall have full, free and complete access at all reasonable times to each Vessel or Advanced or Modern Shipbuilding Technology with respect to which Guarantees or an insurance contract is in force. When a Vessel is in port or undergoing repairs, the Secretary may make photostatic or other copies of any books, records and other relevant documents or papers being examined or audited. Adequate office space and other facilities reasonably required by any representatives of the Secretary engaged in an examination, audit or inspection shall be furnished without charge by the Person in control of the premises where the examination or audit is being conducted.

§ 298.38 Partnership agreements.

Partnership agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basis areas:

(a) Duration of the partnership,

(b) adequate partnership funding requirements and mechanisms,

(c) dissolution of the partnership and the withdrawal of a general partner and

(d) the termination, amendment, or other modification of the partnership agreement without the prior written consent of the Secretary.

§ 298.39 Exemptions.

The Secretary may exempt an applicant from any requirement of this Part not required by law, in exceptional cases, on written findings that:

(a) The case materially involves factors not considered in the promulgation of this part;

(b) (1) a national emergency makes it necessary to approve the exemption or

(2) the financial liability of the United States will be substantially relieved;

(c) the exemption will not substantially affect effective regulation of the Title XI program, consistent with the objectives of this part; and

(d) exemption will not be unjustly discriminatory. In the case of Eligible Export Vessels, the Secretary may also exempt an applicant from any requirement of this part not required by law if the Secretary makes a written determination that such exemption would assist in creating financing terms that would be compatible with export credit terms for the sale of vessels built in shipyards other than those in the United States.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations

§ 298.40 Defaults.

(a) *In General.* Provisions concerning the existence and declaration of a default and demand for payment of the Obligations (described in paragraphs (b) and (c) of this section) shall be included in the Security Agreement and in other parts of the Documentation.

(b) *Payment Default.* In the case of any default in the payment of principal or interest with respect to the Obligations (provided that the Secretary shall not have, upon such terms as may be provided in the Obligation or related

agreements, prior to that demand, assumed the obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), the following procedures shall be applicable:

(1) No demand shall be made for payment under the Guarantees unless the default shall have continued for 30 days (Payment Default).

(2) After the expiration of said 30-day period, demand for payment of all amounts due under the Guarantees must be made no later than 60 days thereafter.

(3) After demand for payment is made by or on behalf of the Obligees, the Secretary shall make payment under the Guarantees, except if the Secretary determines that a Payment Default has not occurred or that such Payment Default has been remedied prior to demand being made.

(c) *Security Default.* If a default occurs under the Security Agreement which is other than a Payment Default (Security Default), the Secretary, as provided in section 1105(b) of the Act, shall have the sole discretion to declare such default a Security Default and may notify the Obligee or agent of the Obligee of such Security Default, stating that demand for payment under the Guarantees must be made no later than 60 days after the date of such notification.

(d) *Payment of Guarantees.* If demand for payment of the Guarantees is made, the Secretary shall, no later than 30 days after the date of such demand (provided that the Secretary shall not have, upon such terms as may be provided in the Obligations or related agreements, prior to that demand, assumed the Obligor's rights and duties under the Obligation and agreements and shall have made any payments in default), make payment to the Obligees, Indenture Trustee or any other agent of the unpaid principal amount of Obligations and unpaid interest accrued and accruing thereon up to, but not including, the date of payment.

§ 298.41 Remedies after default.

(a) *In general.* Provisions governing remedies after a default, which relate to rights and duties of the Obligor, the Secretary and other Persons (where appropriate), shall be included in the Security Agreement or in other parts of the Documentation.

(b) *Action by Secretary.* After a default has occurred and is continuing and before making payment required under the Guarantees, the Secretary may take the Vessel or Advanced or Modern Shipbuilding Technology and hold, lease, charter, operate or use the Vessel or Advanced or Modern Shipbuilding Technology, accounting only for the net profits to the Obligor. After making payment required under the Guarantees, the Secretary may initiate or otherwise participate in legal proceedings of every type, or take any other action considered appropriate, to protect rights and interests granted to the Secretary by sections 1105(c), 1105(e) and 1108(b) of the Act, the Security Agreement or other applicable provisions of law and of the Documentation.

(c) *Security proceeds to Secretary.* The Secretary's interest in proceeds realized from the disposition of or collection with respect to security granted to the Secretary in consideration for the Guarantees (except all proceeds from the sale, requisition, charter or other disposition of property purchased by the Secretary at a foreclosure or other public sale, which proceeds shall belong to and vest exclusively in the Secretary), shall be an amount equal to, but not in excess of, the sum of (in order of priority of application of the proceeds):

(1) Guarantee Fees, if any, due the Secretary under the Security Agreements;

(2) All moneys due and unpaid and secured by the Mortgage or Security Agreement;

(3) All advances, including interest thereon, by the Secretary, pursuant to the Security Agreement and all reasonable charges and expenses of the Secretary;

(4) The accrued and unpaid interest on the Secretary's Note;

(5) The accrued and unpaid balance of the principal of the Secretary's Note; and

(6) To the extent of any collaterization by the Obligor of other debt due to the Secretary from the Obligor under other Title XI financings, such other Title XI debt.

(d) *Security proceeds to Obligor.* The Obligor shall be entitled to the proceeds from the sale or other disposition of security, described in paragraph (c) of this section, if and to the extent that the proceeds realized are in excess of the amounts described in paragraphs (c) (1) through (6) of this section.

§ 298.42 Reporting requirements—financial statements.

The financial statements of the Company shall be audited at least annually, in accordance with generally accepted auditing standards, by independent certified public accountants licensed to practice by the regulatory authority of a State or other political subdivision of the United States or, licensed public accountants licensed to practice by the regulatory authority or other political subdivision of the United States on or before December 31, 1970. In the case of Eligible Export Vessels, the accounts of the Company shall be audited at least annually, and the Secretary may require that the financial statements be in accordance with generally accepted accounting principles, by accountants as described in the first sentence of this section or by independent public accountants licensed to practice by the regulatory authority or other political subdivision of a foreign country, provided such accountants are satisfactory to the Secretary. The accountants performing such audits may be the regular auditors of the Company.

(a) *Reports of Company and other Persons.* Except as otherwise required by the Secretary, the Company shall file a semiannual financial report and an annual financial report, prepared in accordance with generally accepted accounting principles, with the Maritime Administration as specified in the Documentation. Included shall be the balance sheet and a statement of paid-in-capital and retained earnings at the close of the required reporting period, a statement of income for the period and any other statement that the Secretary shall consider necessary to accurately reflect the Company's financial condition and the results of its operations. By letter to the Company, the Secretary shall specify the form required for reporting and the number of copies to be submitted. The Secretary may, by notice to the Company, also require the Company to submit financial statements of any other Person, directly or indirectly participating in the project, if the financial condition of that Person affects the Secretary's security for the Guarantees. The required financial report for the annual period shall be due within 105 days after the close of each fiscal year of the Company, commencing with the first fiscal year ending after the date of the Security Agreement. The required semiannual report shall be due within 105 days after each semiannual period, commencing with the first semiannual period ending after the date of the Security Agreement. The annual report shall be accompanied by the public accountant's report based on an audit of the company's financial statements. An audit by the public accountants of the financial statements contained in the company's semiannual report may be required by the Secretary. Certification of the semiannual report by the accountants may be required by the Secretary. Where independent certification is not required, a responsible corporate officer shall attach a certification that such report is based

on the accounting records and, to the best of that officer's knowledge and belief, is accurate and complete.

(b) *Leveraged lease financing.* If the method of financing involved is a leveraged lease financing, or a trust is the owner of the Vessels, the requirements for annual and semiannual accounting reports of the Obligor may be modified accordingly by the Secretary.

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which information shall state the term for which the insurance is in force.

§ 298.43 Applicability of the regulations.

The regulations in this part shall be in effect as to all Letter Commitments, commitments to guarantee Obligations and Guarantees of Obligations made, issued or entered into after the effective date hereof pursuant to section 1104(a) of the Act, and all mortgages and loans covered thereby. These regulations supersede those issued under part 298 of this title (43 FR 60912) as of the effective date hereof, but shall not affect any Letter Commitments, commitment for Guarantees, Guarantees or contracts of insurance in existence on the effective date of these regulations. The regulations in this part may be amended, but said amendments shall have no effect upon any existing Letter Commitments, guarantees, insurance contracts, commitments for Guarantees or Documentation.

Subpart F—Administration [Reserved]

Dated: May 2, 1996.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–11289 Filed 5–8–96; 8:45 am]

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Federal Register

Thursday
May 9, 1996

Part V

Department of Housing and Urban Development

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 1996; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4017–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Fiscal Year 1996; Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1996.

SUMMARY: This Notice of Funding Availability (NOFA) announces HUD's funding for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (hereafter referred to as the ICDBG Program) for Fiscal Year 1996. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility and available amounts;

(b) A list of steps involved and a checklist of the exhibits required in the application process, including where and how to apply and what to submit;

(c) A description of application processing, including the selection process and the selection criteria.

DATE: Applications must be received by the appropriate Area ONAP of the HUD Office of Native American Programs (ONAP) no later than 3:00 p.m. July 23, 1996.

Application materials will be available from each Area ONAP. General program questions may be directed to the Area ONAP serving your area or by contacting Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Ave. San Francisco, CA 94102. Telephone (415) 436–8121. The TTY number is (415) 436–6594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Table of Contents

I. Purpose and Substantive Description

(a) Authority. Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR Part 953.

(b) HUD Reform Act—Documentation, Access, and Disclosure

1. Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

2. Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12 subpart C, and the notice published in the Federal Register on January 16, 1992 [57 FR 1942], for further information on these disclosure requirements.)

(c) Funding. Amendments to Title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 953.

This notice announces the availability of $50,000,000.

1. Allocations. The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 953.101. Following these requirements, the allocations for FY 1996 are as follows:

Eastern/Woodlands	$3,876,700

Southern Plains	9,174,300
Northern Plains	7,738,100
Southwest	21,111,100
Northwest	2,956,500
Alaska	4,143,300
Total	49,000,000

As indicated in Section I(b)3 below, $1,000,000 will be retained to fund imminent threat grants.

2. Grant Ceilings. The authority to establish grant ceilings is found at 24 CFR 953.100(b)(1). Grant ceilings are established for FY 1996 funding at the following levels:

Area ONAPs	Population	Ceiling
Eastern/ Woodlands.	All	$300,000
Southern Plains.	All	750,000
Northern Plains.	All	800,000
Southwest	50,001+	5,000,000
	10,501–50,000	2,500,000
	9,001–10,500	2,000,000
	7,501–9,000	1,500,000
	6,001–7,500	1,000,000
	4,501–6,000	750,000
	3,001–4,500	650,000
	1,501–3,000	550,000
	1–1,500	450,000
Northwest	All	320,000
Alaska	All	500,000

3. *Imminent Threats.* The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 953, subpart E. In accordance with the provisions of that subpart, $1,000,000 will be retained to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 1996 is $350,000. This ceiling is established pursuant to the provisions of § 953.400(c).

If, in response to a request for assistance, an Area ONAP issues a letter to proceed under the authority of § 953.401(a), an application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must consist of the following components:

—Standard Form 424—Application for Federal Assistance
—Brief description of the proposed project
—Form HUD–4123—Cost Summary
—Form HUD–4125—Implementation Schedule
—Form HUD–2880—Applicant/ Recipient Disclosure/Update Report
—Form HUD–4126—Certifications
—Drug-free workplace certification (24 CFR part 24, Appendix C).

(d) Eligible Activities. Activities that are eligible for ICDBG funds are identified at 24 CFR part 953 subpart C.

(e) Applicant Eligibility. To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska Native Village (or as a tribal organization) by the application submission date.

Tribal organizations are permitted to submit applications under 24 CFR 953.5(b) on behalf of eligible tribes or villages when one or more eligible tribe(s) or village(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under Title I of the Indian Self-Determination and Education Assistance Act.

If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 953.5, a Tribal Organization which submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation and the Regional Corporation.

On February 16, 1995, the Bureau of Indian Affairs (BIA) published a Federal Register Notice entitled ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.'' This Notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR 83. Additionally, pursuant to Title I of the Indian Self Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the deadline for submitting an application. (See 24 CFR 953.5 for a complete description of eligible applicants.)

II. Application Process and Submission Requirements

(a) Application Process

1. An application package may be obtained from the Area ONAP in the following geographic locations:

Eastern/Woodlands Office of Native American Programs, Community Development and Tribal Relations (CD & TR) Staff, 77 West Jackson Blvd., Chicago, Illinois 60604; Telephone: (312) 886–6488 (all States east of the Mississippi River, plus Iowa and Minnesota)

Southern Plains Office of Native American Programs, CD & TR Staff, Suite 400, 500 W. Main Street, Oklahoma City, OK 73102–3202; Telephone: (405) 553–7525. (Louisiana, Kansas, Oklahoma, and Texas, except West Texas)

Northern Plains Office of Native American Programs, CD & TR Staff, First Interstate Tower North, 833 17th Street, Denver, CO 80202–3607; Telephone: (303) 672–5457 (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)

Southwest Office of Native American Programs, CD & TR Staff, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361; Telephone: (602) 379–4197 (Arizona and Southern California)

Southwest Office of Native American Programs, CD & TR Staff, San Francisco Team Philip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; Telephone: (415) 436–8121 (Northern California and Nevada)

Southwest Office of Native American Programs, CD & TR Specialist, Albuquerque Plaza, 201 3rd Street N.W., Suite 1830, Albuquerque, NM 87102–3368; Telephone: (505) 766–1372 (New Mexico and West Texas)

Northwest Office of Native American Programs, CD & TR Staff, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000; Telephone: (206) 220–5271 (Idaho, Oregon, Washington)

Alaska Office of Native American Programs, CD & TR Staff, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135; Telephone: (907) 271–4603 (Alaska)

2. Completed applications must be submitted to the appropriate Area ONAP, listed above, from which application information and packages were obtained. The TTY number is (202)

708–9300. (This is not a toll-free number.)

3. Applications must be received by the appropriate Area ONAP no later than 3:00 P.M. on the deadline date, July 23, 1996.

(b) Application Submission Requirements and Checklist

1. General. An applicant shall submit only one application. The ICDBG grant amount requested shall not total more than the grant ceiling. An application may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within an application will be rated separately.

2. Demographic data. Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

A. Generally available, published data are substantially inaccurate or incomplete;

B. Data provided have been collected systematically and are statistically reliable;

C. Data are, to the greatest extent feasible, independently verifiable; and

D. Data differentiate between reservation and BIA service area populations, when applicable.

3. Publication of community development statement. Applicants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 953.604.

4. Application Submission. The application shall include:

A. Standard Form 424—Application for Federal Assistance;

B. Community Development Statement which includes:

(1) Components that address the relevant selection criteria;

(2) A brief description or an updated description of community development needs;

(3) A brief description of projects proposed to address needs, including scope, magnitude, and method of implementing the project.

(4) A schedule for implementing the project (form HUD–4125 Implementation Schedule);

(5) Cost information for each separate project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123 Cost Summary);

C. Certifications—form HUD 4126;

D. Drug-free Workplace Certification (24 CFR part 24, Appendix C);

E. Applicant/Recipient Disclosure/ Update Report—form HUD 2880, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance;

F. A map showing project location, if appropriate;

G. If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(1) The number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(2) The number to be displaced or temporarily relocated;

(3) The estimated cost of relocation payments and other services;

(4) The source of funds for relocation; and,

(5) The organization that will carry out the relocation activities;

H. If applicable, evidence of the disclosure required by 24 CFR 953.606(e).

III. Application Screening and Review Process

(a) Screening for Acceptance. Each Area ONAP will screen applications for single purpose grants. Applications failing this screening shall be rejected and returned to the applicants unrated. Area ONAPs will accept applications if all the criteria listed below as items 1. through 6. are met:

1. The application is received by the appropriate Area ONAP no later than 3:00 P.M. on the deadline date;

2. The applicant is eligible;

3. The proposed activities are eligible;

4. The application contains substantially all the components specified in Section II(b)(4) of this notice;

5. At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of § 953.201(a); and,

6. The application is for an amount which does not exceed the grant ceilings that are established by the NOFA.

(b) Application Review Process.

1. Threshold review. The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 953.302, as implemented by this NOFA. *If an applicant fails to meet any of the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or applicable project-specific thresholds will not be considered for funding.*

2. All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by an Area ONAP rating team of at least three voting members. The Area ONAP will examine each project to determine in which one of the rating categories set forth in 24 CFR 953.305 the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component are 100, which is the maximum any project can receive.

3. Public service projects. Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in the application. If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

4. Corrections to deficient applications and supplemental information. The Area ONAP will not accept unsolicited information regarding the application after the application deadline has passed. The Area ONAP will notify applicants in writing of technical deficiencies in applications and permit them to be corrected. A technical deficiency is an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. The Area ONAP also may, at its discretion, request supplemental information to resolve inconsistencies or ambiguities in the application or information that may help clarify an application that, in the Area ONAP's view, contains information that is inconsistent with known facts or data.

Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the technical deficiency or provide the requested supplemental information. If the technical deficiency is not corrected within this time period, the Area ONAP will reject the application as incomplete. If the supplemental information is not provided in this time period and, as a consequence, the Area ONAP determines that the applicant has failed to establish compliance with the requirements of 24 CFR 953, the application will be returned, unrated.

No information submitted after the application due date can enhance a project's rating, and a new project may not be substituted for one included in the application.

5. Final ranking. All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on this final ranking, to the extent that funds are available. Individual grant amounts will be determined in a manner consistent with the considerations set forth in 24 CFR 953.100(b)(2).

If the Area ONAP determines that an insufficient amount of money is available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. The Area ONAP may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

6. *Tiebreakers.* When rating results in a tie among projects and insufficient resources remain to fund all tied projects, Area ONAPs shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors will be used in the order listed to resolve the tie:

A. Eastern/Woodlands Office

(1) The applicant with the fewest active grants.

(2) The applicant that has not received an ICDBG grant over the longest period of time.

(3) The project that would benefit the highest percentage of low and moderate income persons.

B. Southern Plains Office

(1) The applicant that has not received an ICDBG grant over the longest period of time over the last 8 years.

(2) The applicant with the fewest active grants.

(3) The project that would benefit the highest percentage of low and moderate income persons.

C. Northern Plains and Southwest Offices

(1) The applicant that has not received an ICDBG grant over the longest period of time.

(2) The applicant with the fewest active grants.

(3) The project that would benefit the highest percentage of low and moderate income persons.

D. Northwest Office

(1) The applicant that has not received an ICDBG grant over the longest period of time.

(2) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(3) The project that would benefit the highest percentage of low and moderate income persons.

E. Alaska Office

(1) The applicant that has not received an ICDBG grant over the longest period of time.

(2) The project that would benefit the highest percentage of low and moderate income persons.

(3) The project that would benefit the most low and moderate income persons.

(c) *Pre-award requirements.*

1. Successful applicants may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will normally be given no less than thirty (30) calendar days to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the Area ONAP may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The Area ONAPs shall require supporting documentation in those instances where:

A. Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

B. The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

2. New projects may not be substituted for those originally proposed in the application.

3. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

4. Grant amounts allocated for applicants unable to meet pre-award requirements will be awarded in accordance with Part V. of this NOFA.

IV. General Threshold Requirements and Definitions

(a) *General Thresholds.* Two types of general thresholds are set forth in 24 CFR 953.301(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds will be addressed within the pertinent project selection criteria categories in section V(b) below.

Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project, on its past performance in the ICDBG program, and in its provision of housing assistance to low and moderate income tribal members. In order to rate and rank a project contained in an application that has passed the screening tests outlined in Section III of this NOFA, Area ONAPs must determine that the proposed project meets the community development appropriateness thresholds, i.e., the project has costs that are reasonable; the project is appropriate for the intended use; and the project is usable or achievable in a timely manner, generally within two years of grant award.

1. Applicant-Specific Thresholds—Capacity and Performance

A. Capacity. The Area ONAP will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project. The application should address who will administer the project and how the applicant plans to handle the technical aspects of executing the project. If the Area ONAP determines, based on substantial evidence, that the applicant does not have or cannot obtain the capacity to undertake the proposed project, the application will not receive further consideration.

B. Performance.

(1) Community development. If an applicant has previously participated in the ICDBG Program, the Area ONAP shall determine whether the applicant has performed adequately in grant administration and management. The applicant is presumed to be performing adequately unless the Area ONAP makes a performance determination to the contrary during periodic evaluations. Where an applicant was found to be performing inadequately, the Area ONAP shall determine whether the applicant has corrected the deficiency or is following a schedule to correct performance to which the applicant and the Area ONAP have agreed. In cases of previously documented deficient performance, the Area ONAP must determine that the applicant has taken appropriate corrective action to improve its performance prior to the application due date. *The Area ONAP will inform in writing any potential applicant which has been determined not to meet this performance threshold no later than 30*

days prior to the application due date. If the performance threshold is not met as of the application submission deadline, an application will not be accepted for rating and ranking.

(2) Housing assistance. The applicant is presumed not to have taken actions to impede the provision of housing assistance for low and moderate income members of the tribe or village. Any action taken by the applicant to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant. If an applicant has established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, the applicant's compliance with the obligations and responsibilities to the IHA set forth in the tribal ordinance which was the basis for the establishment or joining of the IHA will be a performance consideration.

An applicant will not be held accountable for the poor performance of its IHA unless this inadequate performance is found to be a direct result of the applicant's action or inaction. If this is true, the application will be removed from further consideration. Applicants which are members of ''umbrella'' IHAs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are members of the IHA.

If an applicant has received ICDBG funds for the provision of new housing through a subrecipient, the Area ONAP will consider the following in making its determination regarding housing assistance performance:

a. Whether the proposed units were constructed;

b. Whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not;

c. Whether the applicant followed the provisions of its housing plan and procedures; and,

d. Whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

The Area ONAP will inform in writing any potential applicant which has been determined not to meet the housing assistance performance threshold no later than 30 days prior to the application deadline.

(3) Audits. This threshold requires the applicant to meet the following performance criteria:

a. The applicant cannot have an outstanding ICDBG obligation to HUD or a ICDBG program that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

b. The applicant cannot have an overdue or unsatisfactory response to an audit finding. If there is an overdue or unsatisfactory response to an audit finding, the applicant will be disqualified from current and subsequent competition until the applicant has taken final action necessary to close the audit finding. The Area ONAP administrator may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding. An exception may be granted when funds are due HUD or an ICDBG program as a result of a finding only when a satisfactory arrangement for repayment of the debt has been made and payments are current.

2. Community Development Appropriateness. The following criteria must be met by each project:

A. Costs are reasonable. The project must be described in sufficient detail so that the Area ONAP can determine:

(1) That costs are reasonable; and,

(2) That the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application;

B. The project is appropriate for the intended use; and,

C. The project is usable or achievable in a timely manner, generally within a two year period. The timetable for project implementation and completion must be set forth on the form HUD 4125—Implementation Schedule included in the application. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond the applicant's control.

(b) General Definitions.

Adopt. To approve by formal tribal resolution.

Assure. To comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document. To supply supporting written information and/or data in the application which satisfies the NOFA requirement.

Leverage. Resources the grantee will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to: tribal trust funds, loans from individuals or organizations, state or Federal loans or guarantees, other grants, as well as noncash contributions and donated services.

Documentation requirements for point award. For the applicant's own resources, a council resolution which identifies and commits the resources must be included in the application. For resources to be provided by another entity, written verification of an application or request for the leveraged resources must be included in the application. In addition, for grants or other contributed resources from a public agency, foundation, or other private party, a written commitment which may be contingent on approval of the ICDBG award must be received by the Area ONAP no later than 30 days after the application deadline. This commitment must specifically identify or indicate: the dollar amount committed (or dollar value of the noncash resource and the basis for the valuation); that the resources are currently available or will be available when necessary for successful project implementation; and, the project.

If the nature of the funding cycle of the contributing entity precludes such an entity from making a firm funding commitment in this timeframe, such resources will be considered in the award of points if the entity provides a written statement indicating that the application or request for assistance has been received from the ICDBG applicant and stating the date by which its funding determination will be made; this date cannot be more than six months from the anticipated date of grant approval notification by HUD. (If the proposed project rates high enough for funding consideration, a special condition will be established in the grant agreement for the project.)

This condition will indicate that if a firm funding commitment for the leveraged resources is not provided within six months of the date of grant approval, the grant funds approved will be recaptured by HUD and will be used in accordance with the requirements of § 953.102. This statement must be received by the Area ONAP no later than *30 days* after the application deadline. If the commitment or statement is not received in the required timeframe or if the required information is not included, points will not be awarded for the proposed contribution.

If the proposed project still rates high enough to be approved, a pre-award condition will be established which will require the applicant to provide evidence of firmly committed resources to cover the entire non-ICDBG project cost. If this condition is not met, the grant will not be awarded.

In addition to the above requirements for point award, special documentation must be included in the application for certain contributions. The contribution of goods and services will be considered for point award if the applicable requirements listed above are met; if the items or services are demonstrated and determined necessary to the actual development of the project; and comparable cost and/or time estimates are submitted which support the donation.

To be considered for point award land to be contributed will only be considered when its use and area are integral to the development of the project. In addition, the value of the land must be verified by any of the following means or methods and this documentation must be included in the application:

—A site specific appraisal no more than two years old;
—An appraisal of a near-by comparable site also no more than two years old;
—A reasonable extrapolation of land value based on current area realtors value guides.

Project Cost. The total cost to implement the project. Project cost includes both ICDBG and non ICDBG funds and resources.

Section 8 standards. Housing quality standards contained in the Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance Under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program (24 CFR 982.401).

Standard Housing/Standard Condition. Housing which meets the housing quality standards (HQS) adopted by the applicant. The adopted standards must provide for the following:

—That the house is safe, in a physically sound condition with all systems performing their intended design functions;
—A livable home environment;
—An energy efficient building and systems which incorporate energy conservation measures;
—Adequate space and privacy for all intended household members.

The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible. Applicants may submit their request for the approval of standards less stringent than Section 8 standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval by the Area ONAP.

Tribe. Indian Tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations and Regional Corporations.

V. Project Specific Thresholds and Selection Criteria

(a) Summary of Selection System Criteria and Point Awards

	Maximum points
1. Housing:	.....
A. Rehabilitation:	.....
(1) Project Need and Design:	.....
a. Percent of funds for standard rehab	20
b. Applicant's selection criteria	10
c. Housing survey	15
(2) Planning and Implementation:	.....
a. Rehabilitation policies:	.....
(i) Rehabilitation standards	5
(ii) Selection criteria	10
(iii) Project implementation policies and procedures	10
b. Post rehab maintenance	5
c. Cost estimates	15
d. Cost effectiveness	5
(3) Leveraging	5
Total points	100
B. Land to Support New Housing:	.....
(1) Project Need	40
(2) Planning and Implementation:	.....
a. Suitability of the land	20
b. Housing resources	10
c. Supportive services	5
d. Commitment of households	5
e. Land to trust status	5
f. Infrastructure commitment	10
g. Land meets need and is reasonably priced	5
Total points	100
C. New Housing Construction:	.....
1. Project Need and Design:	.....
a. IHA member/assistance	15
b. Housing policies and plan	20
c. Beneficiary identification	10
2. Planning and Implementation:	
a. Occupancy standards	10
b. Site acceptability	15
c. Energy conservation design	5
d. Housing survey	10

	Maximum points
e. Cost effectiveness	5
3. Leveraging	10
Total points	100
2. Community Facilities:	.....
A. Infrastructure:	.....
(1) Project Need and Design:	.....
a. Meets an essential need	20
b. Benefits the neediest	15
c. Provides infrastructure/health and safety	25
(2) Planning and Implementation:	.....
a. Maintenance and operation plan	15
b. Appropriate and effective design scale and cost	15
(3) Leveraging	10
Total points	100
B. Buildings:	.....
(1) Project Need and Design:	.....
a. Meets an essential need	20
b. Benefits the neediest	10
c. Provides building/health and safety	25
d. Multi-use/multi-benefit	5
(2) Planning and Implementation:	.....
a. Maintenance and operation plan	15
b. Appropriate and effective design scale and cost	15
(3) Leveraging	10
Total points	100
C. Economic Development:	.....
(1) Organization	8
(2) Project Success:	.....
a. Market analysis	15
b. Management capacity	15
c. Financial analysis	15
(3) Leveraging	12
(4) Jobs:	.....
a. ICDBG cost/job	15
b. Quality of jobs/training	5
(5) Additional considerations:	15
Total points	100

(b) Project Specific Thresholds and Selection Criteria

1. Housing Category Projects

A. Specific threshold for housing category projects.

The applicant shall provide an assurance that households that have been evicted from HUD assisted housing within the past five years will not be assisted by the proposed project except in emergency situations. The Area ONAP Administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

B. Rehabilitation

(1) Thresholds

a. All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application. *These standards and policies must be submitted with the application.*

b. The applicant shall provide an assurance that:

(i) Any house to be rehabilitated will be the permanent non-seasonal residence of the occupants; the residents will live in the unit at least nine months per year.

(ii) Houses designated for eventual replacement will only receive repairs essential for the health and safety of the occupants.

(iii) Project funds will be used to rehabilitate HUD assisted houses only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. In emergency situations the Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(iv) Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years will not be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(2) *Grant Limits*

Rehabilitation grant limits for each Area ONAP jurisdiction are as follows:

a. Eastern/Woodlands—$15,000
b. Southern Plains—$20,000
c. Northern Plains—$33,500
d. Southwest—$35,000
e. Northwest—$20,000
f. Alaska—Lesser of $45/sq.ft. or $35,000

(3) Selection Criteria

a. Project Need and Design (45 points)

(i) The percentage of ICDBG funds committed to bring the houses to be assisted up to a standard condition as defined by the applicant. Administrative, planning, and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring the houses up to a standard condition. The percentage of ICDBG funds not used to bring the houses up to a standard condition must

be used for emergency repairs, demolition of substandard units or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG funds committed to bring houses to be assisted up to a standard condition:

91–100%—20 points
81–90.9%—15 points
80.9 and less—0 points

(ii) The applicant's selection criteria which are included in the application give first priority to the neediest households. ''Neediest'' is defined as households whose houses are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

Yes—10 points

No—0 points

(iii) Documentation of project need with a housing survey of all of the houses to be rehabilitated with ICDBG funds. This survey should include standard housing data on each house surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each house. *A definition of ''suitable for rehabilitation'' must be included.* At a minimum, this definition must not include houses that need only minor repairs, or houses that need such major repairs that rehabilitation is structurally or financially infeasible.

The application contains all the required survey data and the required definition of ''suitable for rehabilitation.'' (15 points)

The application does not contain the required definition of ''suitable for rehabilitation'' and/or all the survey data, but does contain sufficient data to enable the project to proceed effectively. (10 points)

The application does not contain survey data or the survey data it does contain is not sufficient to enable the project to proceed effectively. (0 points)

b. Planning and Implementation (50 points)

(i) Rehabilitation Policies and Procedures including:

a. Adopted rehabilitation standards. The rehabilitation standards adopted by the applicant will ensure that after rehabilitation the houses assisted will be in a standard condition.

Yes—5 points
No—0 points

b. Rehabilitation selection policies and procedures. The rehabilitation selection policies and procedures contained in the application include:

—Property selection standards;
—Cost limits;
—Type of financing (e.g., loan or grant);
—Homeowner costs and responsibilities;
—Procedures for selecting households to be assisted; and,
—Income verification procedures.

The application contains all the rehabilitation selection policies and procedures listed above. (10 points)

The application does not contain all the rehabilitation selection policies and procedures listed above, but contains sufficient data to enable the project to proceed effectively or the application contains all the rehabilitation selection policies and procedures listed above, but in insufficient detail. (5 points)

The application does not contain the rehabilitation selection policies and procedures listed above or if it does contain policies and procedures, they are not sufficient to enable the project to proceed effectively. (0 points)

c. Project implementation policies and procedures. These policies and procedures must include a description of the following items:

—The qualifications which will be required of the inspector;
—The inspection procedures to be used;
—The procedures to be used to select the contractor or contractors;
—The manner in which the households to be assisted will be involved in the rehabilitation process;
—How disputes between the households to be assisted, the contractors and the applicant will be resolved; and, if applicable,
—The repayment provisions which will be required if sale of the assisted house occurs prior to 5 years after the rehabilitation work has been completed.

The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented. (10 points)

The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. (5 points)

The application does not contain the policies and procedures listed above. (0 points)

(ii) Post rehabilitation maintenance policies that address counseling and training assisted households on maintenance. The policies included in the application contain a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and persons with disabilities). The policies include follow-up inspections after rehabilitation is completed to ensure the house is being maintained. (5 points)

The policies contain a well-planned home maintenance training and counseling program but fail to adequately address all of the items listed above. (3 points)

The application does not contain a well-planned home maintenance training and counseling program. (0 points)

(iii) Quality of cost estimates. Cost estimates have been prepared by a qualified individual. (Qualifications of the estimator must be included in the application.) Costs of rehabilitation are documented on a per house basis and are supported by a work write-up for each house to be assisted. The work write-ups are based upon making those repairs necessary to bring the houses to a standard condition in a manner consistent with adopted construction codes and requirements. The write-ups must be submitted with the application. If national standards, e.g., the Uniform Building Code, have been locally adopted as the construction codes and requirements, they must be referenced. If locally developed and adopted codes and requirements are used, they must be submitted. (15 points)

Cost estimates have been prepared for each house to be rehabilitated to determine the total rehabilitation cost. The cost estimates are included in the application. Costs to rehabilitate each house are documented by a deficiency list. (12 points)

Cost estimates have been prepared and are included in the application but the estimates are based on surveys and not on individual house deficiency lists. (5 points)

Cost estimates are not included in the application *or* the basis for the cost estimates included is inappropriate or not provided. (0 points)

(iv) Cost effectiveness of the rehabilitation program. This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the houses to be assisted to a standard condition in an efficient and cost effective manner.

Rehabilitation project is cost effective. (5 points)

Rehabilitation project is not cost effective. (0 points)

c. Leveraging. (5 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage' included in this NOFA and the following breakdown:

Non-ICDBG percentage of project cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

C. Land to Support New Housing

(1) Thresholds

a. The application contains information and documentation which establishes that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households with documented housing needs.

b. Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels and the condition of current housing or an IHA approved waiting list. *The survey or waiting list must be submitted with the application.*

(2) Selection Criteria

a. Project Need and Design. (40 Points)

Information included in the application establishes that:

The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. (40 points); or,

The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. (30 points); or,

The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. (25 points); or,

The applicant will be acquiring land for the construction of amenities for existing housing. (15 points); or,

The reason for the land acquisition does not meet any of the criteria listed above. (0 points)

b. *Planning and Implementation.* (60 points)

(i) Suitability of land to be acquired. A preliminary investigation has been conducted by a qualified entity independent of the applicant. Based on this investigation *(which must be submitted with the application),* the land appears to meet all applicable requirements:

—Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.
—The land has adequate:
—Availability of drinking water;
—Access to utilities;
—Vehicular access;
—Drainage;
—The land appears to comply with environmental requirements. Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

Yes—20 points
No—0 points

(ii) Housing resources.

Evidence of a conditional commitment for at least 25 percent of the housing units to be built on the land proposed for acquisition or evidence that an approvable application for these units has been submitted has been included in the application. (10 points)

The evidence required for the award of 10 points has not been included in the application. (0 points)

(iii) Availability/accessibility of supportive services and employment opportunities. Documentation is provided in the application to indicate that upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

Yes—5 points
No—0 points

(iv) Commitment that households will move into the new housing. Documented commitment from households that they will move into the new housing to be built on the land to be acquired is included in the application.

Yes—5 points
No—0 points

(v) Land can be taken into trust and provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust. The applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant which indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

Documentation from the BIA that land can be taken into trust and the required governing body resolution are included in the application. (5 points)

Either the assurance or the resolution (or both) are missing from the application or they are inadequate. (0 points)

(vi) A plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

Financial commitments for all necessary infrastructure have been included in the application or documentation is included which demonstrates that all necessary infrastructure is in place. (10 points)

A plan for the provision of all necessary infrastructure is included in the application but all financial commitments required to implement the plan have not been submitted. (5 points)

Neither a financial commitment or plan are included in the application. (0 points)

(vii) The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced. The application includes documentation which indicates that the applicant has examined and assessed the appropriateness of alternative sites and which demonstrates that the site proposed for acquisition best meets the documented housing needs of tribal households. The application must include comparable sales data which shows that the cost of the land proposed for acquisition is reasonable.

Yes—5 points
No—0 points

D. New Housing Construction

The following thresholds and selection criteria apply to new housing construction to be implemented through a Community-Based Development Organization (CBDO) as provided for under 24 CFR 570.204. *Please note that all households to be assisted under a new housing construction project must be of low or moderate income status.*

(1) Thresholds

a. New housing construction can only be implemented through a Community-Based Development Organization (CBDO). Eligible CBDOs are described in 24 CFR 570.204(c). The applicant must provide an assurance that it understands this requirement.

b. *Documentation which supports the following determinations must be included in the application:*

—No other housing is available in the immediate reservation area that is suitable for the households to be assisted;
—No other funding sources can meet the needs of the household(s) to be served.
—The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, or the household is currently in an overcrowded house [sharing house with another household(s)], or the household to be assisted has no current residence.

c. All applicants for new housing construction projects shall adopt construction standards and construction policies prior to submitting an application. Applicants must identify the building code to be used when constructing the houses and must document that this code has been adopted. The building code may be a tribal building code or a nationally recognized model code. If it is a tribal code it must regulate all of the areas and sub-areas identified in 24 CFR 200.925(b), and it must be reviewed and approved by the Area ONAP. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c).

d. The applicant must provide an assurance that any house to be constructed will be the permanent non-seasonal residence of the household to be assisted; this household must live in the house at least nine months per year.

(2) Selection Criteria

a. Project Need and Design (45 points)

(i) The application includes documentation which establishes that the applicant either is not served by an Indian Housing Authority(IHA), or if it is a member of an umbrella IHA, this IHA has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction assistance in a substantial period of time due to limited HUD appropriations. The period of time during which the IHA serving the applicant has not received funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

No assistance from IHA for 10 years or longer. (15 points)

No assistance from IHA for 6–9 years, 11 months. (10 points)

No assistance from IHA for 0–5 years, 11 months. (0 points)

(ii) Adopted housing construction policies and plan. The plan must include a description of the proposed CBDO and its relationship (or proposed relationship) to the applicant. In addition, the policies and plan must include:

—A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.
—A system effectively addressing long-term maintenance of the constructed houses.
—Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance and other normal maintenance costs.
—Policies governing ownership of the houses, including the status of the land.
—Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.
—Policies governing disposition or conversion to non-dwelling uses of substandard houses that will be vacated when a replacement house is provided.

The policies and plan include all of the information listed above. (20 points)

The policies and plan do not include all of the information listed above, but do include sufficient information to allow the project to proceed effectively or, all of the information is included, but in insufficient detail. (10 points)

The information included in the application is not sufficient to meet the requirements for the award of 10 points. (0 points)

(iii) Beneficiary identification. Households to be assisted are identified in the application and their income eligibility and household size are documented. (10 points)

Households to be assisted are not identified or, if identified, their income eligibility and household size are not documented. (0 points)

b. Planning and Implementation (45 points)

(i) Occupancy Standards. The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). The standards must be submitted with the application.

Applicant has adopted reasonable occupancy standards which are included in the application. (10 points)

Applicant has not adopted reasonable occupancy standards or the standards were not included in the application. (0 points)

(ii) Site Acceptability.

The applicant (or the proposed beneficiary household) has control of the land upon which the houses will be built. The application includes documentation that all housing sites are in trust or documentation from the BIA that the sites will be taken into trust within one year of the date of the ICDBG approval notification. If the sites are not in trust by the date of ICDBG approval notification, documentation that they are in trust must be provided to the Area ONAP before ICDBG funds may be obligated for construction.

A preliminary investigation of the site(s) has been conducted by a qualified entity independent of the applicant. Based on this investigation (which must be included in the application) the site(s) appear to meet all applicable requirements:

—Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified;
—Each site has adequate:
—Availability of drinking water
—Access to utilities
—Vehicular access
—Drainage;
—Each site appears to comply with environmental requirements.

Yes—15 points
No—0 points

(iii) Energy Conservation Design. The application includes documentation which demonstrates that the proposed houses have been designed in a manner which will ensure that energy use will be no greater than that for comparable houses in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Any special design features, materials, or construction techniques which enhance energy conservation must be described.

Yes—5 points
No—0 points

(iv) Housing Survey.

The applicant has completed a survey of housing conditions and housing needs of its tribal members. This survey was completed within the twelve month period prior to the application submission deadline (or if an earlier survey, it was updated during this time period). The survey must be submitted

with the application. The following descriptive data is included for each household surveyed.

—Size of the household, inc. age and gender of any children
—Is the household occupying permanent housing or is it homeless?
—Annual household income
—Owner or renter
—Number of habitable rooms and number of sleeping rooms
Physical condition of the house—standard/substandard

If substandard, is it suitable for rehabilitation? *A definition of ''suitable for rehabilitation'' must be included.*

—Number of distinct households occupying the house/degree of overcrowding
—If there is a need for a replacement house, what are the housing preferences of the household, e.g. ownership or rental; location; manufactured or stick-built

An acceptable survey was submitted. (10 points)

The survey submitted was not acceptable or no survey was submitted. (0 points)

(v) Cost effectiveness of new housing construction.

This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner. The applicant has demonstrated that the proposed activities are cost effective. (5 points)

The applicant has not demonstrated that the proposed activities are cost effective. (0 points)

c. Leveraging. (10 points)

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non–ICDBG percentage of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

2. Community Facilities

A. Infrastructure

(1) Selection Criteria

a. Project Need and Design. (60 points)

(i) The application includes documentation which demonstrates that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

The proposed project will fulfill a function which is critical to the continued existence or orderly development of the community. (20 points)

The proposed project will fulfill a function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

85 percent or more of the beneficiaries are low and moderate income. (15 points)

Between 75–84.9 percent of the beneficiaries are low and moderate income. (10 points)

Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) The application includes documentation which demonstrates that the proposed project will provide infrastructure that does not currently exist for the area to be served *or* it will eliminate or substantially reduce a health or safety threat or problem *or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

The infrastructure does not exist *or* the existing infrastructure no longer functions *or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. (25 points)

The existing infrastructure no longer functions adequately to meet current needs *or* is unreliable. (20 points)

The proposed project will replace or supplement existing infrastructure which is adequate for current needs but which will not meet acknowledged future needs. (12 points)

The proposed project will replace or supplement existing infrastructure which is adequate to meet current needs and future needs have not been acknowledged or documented. (0 points)

If the project is intended to address a health or safety threat or problem, the applicant must provide documentation consisting of a signed study or letter from a qualified independent authority which verifies that:

—A threat to health or safety (or a health or safety problem) exists which has caused or has the potential to cause serious illness, injury, disease, or death; and,
—The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

b. Planning and Implementation (30 points)

(i) A viable plan for maintenance and operation. If the applicant is to assume responsibility for maintenance and operation of the proposed facility, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. This plan and the adopting resolution must be included in the application. The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to assume these responsibilities must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

The plan, resolution or the commitment letter have not been included in the application or if included they are not acceptable. (0 points)

c. An appropriate and effective design, scale and cost. The application includes information which demonstrates that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that the use of existing facilities and resources, and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

The required information is included in the application. (15 points)

The required information is not included in the application or, if included, it is unacceptable. (0 points)

d. Leveraging. (10 points) Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non–ICDBG percentage of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9.	4
5–9.9	2
0–4.9	0

B. Buildings

(1) Threshold. An applicant proposing a facility which would provide health care services funded by the Indian Health Service (IHS) must assure that the facility meets all applicable IHS facility requirements. It is recognized that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(2) Selection Criteria.

a. Project Need and Design. (60 points)

(i) The application includes documentation that the proposed building meets an essential community development need by providing space so that a service or function which is critical to the continued existence or orderly development of the community can be provided.

The proposed building will provide space for a service or function which is essential to the continued existence or orderly development of the community. (20 points)

The proposed building will provide space for a service or function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) The proposed project benefits the neediest segment of the population, as identified below. Applications must include information which demonstrates that income data was collected in a statistically reliable and independently verifiable manner and that:

85 percent or more of the beneficiaries are low and moderate income. (10 points)

Between 75–84.9 percent of the beneficiaries are low and moderate income. (8 points)

Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) The application includes documentation which demonstrates that the proposed building will be used to provide services or functions which are not provided to service area beneficiaries *or* it will replace a building which does not meet health or safety standards which is currently being used to provide the service or function *or* it will replace a building which is no longer able to provide the space or amenities to meet the current need for the services or functions.

The services or functions to be provided in the proposed building do not exist for the service area population *or* the building currently being used does not meet health or safety standards. (25 points)

The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. (20 points)

The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. (10 points)

The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. (0 points)

If the proposed building is intended to replace an existing building which does not meet health or safety standards, the application must include documentation consisting of a signed letter from a qualified independent authority which specifically identifies the standard or standards which are not being met by the existing building.

(iv) Provides multiple uses or multiple benefits, or has services available 24 hours a day. The application must show that the proposed building will house more than one broad category of activity or that services would be provided out of the building 24 hours a day. A written commitment for the use of the space must be included in the application. ''Broad category'' means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

The proposed building will provide multiple uses or benefits or will have services available 24 hours/day and a commitment for the use of the space is included in the application. (5 points)

The proposed building will not provide multiple benefits or services or will not have services available 24 hours a day *or* the application does not include a commitment for the use of the space. (0 points)

b. Planning and Implementation. (30 points)

(i) A viable plan for maintenance and operation. If the applicant is to assume responsibility for the maintenance and operation of the proposed building, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and which clearly identifies operating responsibilities and resources. This plan and the adopting resolution must be included in the application. The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume and which documents its financial ability to meet these responsibilities must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the Area ONAP is able to determine that the entity is financially able to assume the costs of maintenance and operation.

An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

The plan, resolution or the commitment letter have not been included in the application, or if included, they are not acceptable. (0 points)

(ii) An appropriate and effective design, scale and cost. The application includes information which demonstrates that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that the use of existing facilities and resources and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed building),

the application must include an explanation.

The required information is included in the application. (15 points)

The required information is not included in the application or, if included, it is unacceptable. (0 points)

c. Leveraging. (10 points)

Points under this component will be awarded based on the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percentage of project cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

3. Economic Development

A. Thresholds

(1) Economic development assistance may be provided only when a financial analysis is done which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project.

(2) All economic development projects must meet one of the national objectives. A general claim of cash flow or benefit to the tribe as a whole does not demonstrate benefit to low and moderate income persons.

B. Selection Criteria

(1) Organization. (8 points)

The application contains information and documentation which addresses all of the following three elements:

—The applicant (or entity to be assisted) has an established organization system for operation of a business, (e.g., adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

—Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

—The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted.

(Maximum: 8 Points)

The application contains all of the first element listed above, and some of the items in the second and third elements *OR*, the application contains all of the elements listed above, but in insufficient detail. The business should be able to operate effectively. (Moderate: 5 Points)

The application does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 Points)

(2) Project Success. (45 points)

The project will be rated on the adequacy and quality of the information included in the application which addresses the following criteria: ANY PROJECT NOT RECEIVING AT LEAST MODERATE POINTS IN EACH OF THE FOLLOWING THREE RATING FACTORS WILL NOT BE CONSIDERED FOR FUNDING.

a. Market analysis

A feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Maximum: 15 points)

A feasibility/market analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market. *The analysis must be submitted with the application.* (Moderate: 10 points)

The submission does not meet the criteria for the award of moderate points. (Unsatisfactory: 0 points)

b. Management capacity.

A management team with qualifying specialized training or technical/managerial experience in the operation of a similar business has been identified. *Job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team must be submitted with the application.* (Maximum: 15 points)

A management team with qualifying general business training or experience will be hired if the grant is approved. *Job descriptions of key management positions must be submitted with the application.* (Moderate: 12 points)

The submission does not meet the criteria for the award of 12 points. (Unsatisfactory: 0 points)

c. Financial Analysis of the Business

The financial viability of a project will be determined by an analysis of financial and other project related information. For all proposed projects, the following must be submitted:

(i) A detailed cost summary for the project;

(ii) Evidence of funding sources;

(iii) Five year operating or cash flow financial projections. If the project involves the expansion of an existing business, financial statements for the most recent three year period for the business must also be submitted with the application (financial statements include the balance sheet, income statement and statement of retained earnings). For start-up businesses that will not be owned by the grantee, current financial or net worth statements of principal business owners or officers must also be submitted with the application.

The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financially viable, the Area ONAP will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used. If one of these standards is cited by the applicant, the appropriate data must be submitted with the application. Based on the analysis:

The project has an excellent chance of achieving financial success. (Maximum: 15 points)

The project has an average chance of achieving financial success. (Moderate: 8 points)

The project has a minimal prospect of achieving financial success. (Unsatisfactory: 0 points)

(3) Leveraging.

Points under this component will be awarded in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG percentage of project cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
Less than 10%	0

(4) Permanent Full-Time Equivalent Job Creation and Training. (20 points)

The total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions. Retained jobs will not be counted unless clear evidence is

provided that these jobs would be lost without the project. The number and kind(s) of jobs expected to be available to low and moderate income persons must be identified.

a. ICDBG cost per job

$30,000 or less—15 points
$30,001–40,000—12 points
$40,001–45,000—8 points
$45,001+—0 points

b. Quality of jobs and/or training targeted to low and moderate income persons.

—The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *or*
—The employer commits to provide training opportunities. A description of the planned training program must be submitted with the application

Yes—5 points
No—0 points

(5) Additional Considerations. (15 points) A project must meet three of the following criteria to receive 15 points. (15 points)

—Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences.

Yes—5 points
No 0 points

—Provide spin-off benefits beyond the initial economic development benefits to employees or to the community

Yes—5 points
No—0 points

—Provide special opportunities for residents of Federally-assisted housing

Yes—5 points
No—0 points

—Provide benefits to other businesses owned by Indians or Alaska natives

Yes—5 points
No—0 points

—Loan Repayment/Reuse of ICDBG funds. If the business is not tribally owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business

Yes—5 points
No—0 points

VI. Procedural Error and Appeals

With respect to any claims of procedural error that may be made by unsuccessful applicants, please note that a procedural error is, by definition, an error in process. An example is a point calculation error which would, if corrected, raise the total point award for a project over the cut-off point for funding. Rating panel judgements made within the provisions of this NOFA and the program regulations (24 CFR 953) are not subject to claims of procedural error. If an Area ONAP makes a procedural error in the application review and rating process which, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAP may fund that project in the next funding round without further competition. All appeals must be submitted to the appropriate Area ONAP within 90 days after the applicant is notified in writing of a funding decision.

VII. Other Matters

(a) Environmental Statement. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

(b) Recipient Compliance with Environmental Requirements. Prior to any commitment of project funds and before any request for release of funds, a recipient must comply with the environmental requirements identified in 24 CFR 953.605.

(c) Federalism Executive Order. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaska native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

(d) Family Executive Order. The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus not subject to review under the Order.

(e) Prohibition of Advance Disclosure of Funding Decisions. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Area ONAP Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Economic Opportunities for Low and Very Low Income Persons. All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)).

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban

Development Act (42 U.S.C. 3535(d)); 24 CFR 953.

Dated: April 23, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–11509 Filed 5–8–96; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Thursday
May 9, 1996

Part VI

Securities and Exchange Commission

17 CFR Parts 230, 240 and 249

Relief From Reporting by Small Issuers; Exemption for Certain California Limited Issues; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–37157; File No. S7–16–95]

RIN 3235–AG48

Relief From Reporting by Small Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is announcing the adoption of revisions to Rules 12g–1, 12g–4 and 12h–3 under the Securities Exchange Act of 1934, which will increase the number of issuers not subject to the registration and reporting requirements of the Exchange Act, by increasing the total assets threshold from $5 million to $10 million.

EFFECTIVE DATE: The rule amendments will be effective on May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

SUPPLEMENTARY INFORMATION: On June 27, 1995,[1] the Commission published for comment proposed amendments to Rules 12g–1, 12g–4 and 12h–3[2] under the Securities Exchange Act of 1934.[3] These proposals were designed to increase the number of issuers classified as exempt from the registration and reporting provisions of the Exchange Act by changing the total asset threshold from $5 million to $10 million. Conforming changes also were proposed to be made to Form 15.[4] Having considered the comments received, the Commission is adopting the revisions as proposed.[5]

I. Discussion

Under the current rules, an issuer that has 500 or more record holders of a class of equity securities and total assets of $5 million or more must register its securities under the Exchange Act.[6] Issuers that must register are required to comply with the periodic reporting and other provisions applicable to public companies contained in the Exchange Act.[7] The asset threshold was originally set at $1 million in Section 12(g). Pursuant to its authority under Section 12(h) of the Exchange Act,[8] the Commission has increased the amount on two occasions: from $1 million to $3 million in 1982,[9] and from $3 million to the current $5 million in 1986.[10]

The proposal to increase the asset threshold to $10 million was designed, in part, to increase the utility of the Commission's small offering exemptions, such as Regulation A, a principal benefit of which is that companies conducting such offerings do not automatically become subject to Exchange Act reporting. The Commission has long recognized that the cost of compliance with Exchange Act reporting requirements is relatively greater for smaller companies than for larger ones.[11] The amendments adopted today are designed to strike the appropriate balance between such costs and investors' needs for the information required in Exchange Act reports. Commenters generally agreed that this change would be beneficial for smaller companies and would be consistent with investor protection. In light of the foregoing, the Commission finds that the increase in the asset threshold is not inconsistent with the public interest or the protection of investors and is adopting the rule changes as proposed.

Under today's revision to Rule 12g–1, an issuer now will not be required to register under Section 12(g) until it has 500 or more record holders of a class of equity securities and total assets of $10 million or more.[12] This revision does not change existing requirements that securities traded on national exchanges[13] or the National Association of Securities Dealers Automated Quotation System (''Nasdaq'')[14] be registered pursuant to Section 12 of the Exchange Act. In addition, a company that conducts a public offering registered under the Securities Act of 1933 (''Securities Act'')[15] will continue to be subject to reporting pursuant to Section 15(d) of the Exchange Act unless the company becomes eligible to suspend such reporting. The revisions also raise the asset threshold for termination of Section 12(g) registration and suspension of Section 15(d) reporting from $5 million to $10 million, but do not change the other tests for such termination and suspension.[16] Finally, the description of Form 15 is being amended to indicate that the total assets criterion is $10 million. These new thresholds should make the exemptive, termination and suspension provisions more useful to small businesses and lower their costs of compliance with the federal securities laws.

There are approximately 650 issuers with between $5 million and $10 million in total assets that report with the Commission. Had the new asset threshold previously been in effect, these companies would not have been required to register and report with the Commission, unless they had voluntarily decided to do so, either because their securities are traded on a national securities exchange or Nasdaq, or because they chose to conduct a Securities Act registered offering. Of

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[1] Release No. 33–7186 (June 27, 1995) [60 FR 35642] (''Proposing Release''). The comment letters received are available for inspection and copying at the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Please refer to File Number S7–16–95.

[2] 17 CFR 240.12g–1, 240.12g–4 and 240.12h–3.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 249.323. Form 15 is filed by an issuer to notify the Commission that it is terminating its registration under Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)] or suspending its reporting under Section 15(d) [15 U.S.C. 78o(d)].

[5] As explained more fully below, the proposed changes to certain of the Commission's definitions of a ''small entity'' for purposes of the Regulatory Flexibility Act [5 U.S.C. 601–612] have not been adopted.

[6] *See* Exchange Act Section 12(g) and Rule 12g–1.

[7] *E.g.*, the proxy requirements of Section 14 [15 U.S.C. 78n] and the short-swing profit provisions of Section 16 of the Exchange Act [15 U.S.C. 78p].

In addition, any entity, including an issuer, must register under the Exchange Act as a transfer agent if it performs the function of a transfer agent with respect to any security which is registered under Section 12 of the Exchange Act or which would be required to be registered except for the exemptions provided by subsection 12(g)(2)(B) or (g)(2)(G). 15 U.S.C. 78q–1(c)(1). As a result of the revisions adopted in this release, the number of entities, including issuers, that can perform transfer agent functions without registration with the Commission may increase.

[8] 15 U.S.C. 78*l*(h).

[9] Release No. 34–18647 (April 15, 1982) [47 FR 17046].

[10] Release No. 34–23406 (July 8, 1986) [51 FR 25360].

[11] See Release No. 33–6605 (September 30, 1985) [50 FR 41162].

[12] This modification to Rule 12g–1 retains the standard with respect to foreign private issuers, which provides that if a foreign private issuer has securities quoted in an automated interdealer quotation system it remains subject to registration under Section 12(g).

[13] Securities traded on a national securities exchange must be registered under the Exchange Act pursuant to Section 12(b) [15 U.S.C. 78*l*(b)] of that Act.

[14] Pursuant to Schedule D to the NASD's By-Laws, securities traded on the Nasdaq system must be registered pursuant to Section 12 of the Exchange Act, CCH NASD Manual para. 1803.

[15] 15 U.S.C. 77a *et seq.*

[16] Rules 12g–4 and 12h–3 currently allow for termination of registration of a class of securities under Section 12(g) and suspension of the duty to file reports under Section 15(d) when the class of securities is held of record by less than 300 persons, or by less than 500 persons where the total assets of the issuer have not exceeded $5 million on the last day of each of the issuer's three most recent fiscal years. Also, the Section 15(d) reporting obligation cannot be suspended under Rule 12h–3 for a fiscal year in which a Securities Act registration statement relating to the class of securities becomes effective. The revisions amend Rules 12g–4 and 12h–3 to change the asset test from $5 million to $10 million.

these 650, approximately 540 are traded on an exchange or Nasdaq, and approximately 110 are not.

Today's rule changes affect the asset threshold for entering and exiting reporting, but do not affect the other criteria under the rules for determining when a company may cease reporting. Consequently, the effect on currently reporting companies is modest, with approximately 10 companies becoming eligible to cease reporting at this time; [17] about another 20 companies could terminate their reporting obligations if they decided to delist their securities from an exchange or Nasdaq.

While the number of companies that would be able to stop reporting is relatively small, the rule should provide significant benefits for small, growing companies. These companies will have more flexibility to raise equity capital and grow before becoming subject to the Commission's reporting requirements.

II. Regulatory Flexibility Act Definitions

The Commission proposed to modify the definitions of ''small entity'' for purposes of the Regulatory Flexibility Act by raising the total assets level to $10 million.[18] In the intervening period since the proposals were published, Congress has enacted amendments to the Regulatory Flexibility Act.[19] The Commission has determined not to adopt these proposed rule revisions at this time, but will give them further consideration once it has had an opportunity to evaluate fully these recent statutory changes.

III. Effective Date

The Commission has determined to make the rule changes effective on May 9, 1996, the date of publication in the Federal Register. Early effectiveness is appropriate under the Administrative Procedure Act inasmuch as the raising of these thresholds ''grants or recognizes an exemption'' [20] from registration and reporting requirements to a larger class of companies than existed under previous requirements.

IV. Future Initiatives

Some commenters recommended further revision of the reporting thresholds. For example, one commenter suggested the adoption of an exemption for small business issuers whose public float or trading activity is so low as to show insufficient market interest. Another recommended eliminating the shareholder numerical test from the various rules. The Commission has considered these suggestions and has determined to evaluate them further in connection with future initiatives undertaken by the Commission as it implements recommendations of the reports of the Task Force on Disclosure Simplification,[21] and the Advisory Committee on the Capital Formation and Regulatory Processes.[22] The work of both of these groups has been dedicated to reassessing and reforming the federal securities disclosure regime where necessary and appropriate in the public interest and consistent with investor protection.

V. Cost-Benefit Analysis

The Commission solicited comment to assist in its evaluation of the costs and benefits that might result from the possible increase in the assets threshold. Several commenters, while not addressing the solicitation of comment specifically, supported the proposal as part of the Commission's efforts to reduce both the regulatory burden and the costs of raising capital and compliance for small issuers. The Commission continues to believe that as a result of this action, compliance burdens will be decreased without significant impact upon the needs of investors, as it stated in the proposing release. As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

VI. Final Regulatory Flexibility Analysis

The Commission has prepared a final regulatory flexibility analysis in accordance with 5 U.S.C. 603 regarding the changes to Exchange Act Rules 12g–1, 12g–4, and 12h–3 and the description of Form 15. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the Proposing Release. A copy of the final regulatory flexibility analysis may be obtained by contacting James R. Budge, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 at (202) 942–2910.

VII. Statutory Basis

The amendments to the Commission's rules and form are being adopted by the Commission pursuant to Sections 12, 13, 15 and 23(a) of the Securities Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. The authority citation for Part 249 continues to read, in part, as follows:

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[17] These issuers would be able to terminate their registration because they have:

—Assets between $5 and $10 million;

—No securities traded on an exchange or Nasdaq;

—No current 15(d) reporting obligation arising from registering a securities offering in the last year;

—In each of the last three fiscal years, assets not exceeding $10 million; and

—Between 300 and 500 shareholders.

[18] The definitions are found at 17 CFR 230.157, 17 CFR 240.0–10, and 17 CFR 260.0–7.

[19] See the Small Business Regulatory Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996), signed by the President on March 29, 1996.

[20] 5 U.S.C. 553(d)(1).

[21] The Task Force on Disclosure Simplification was organized in August 1995 to review forms and rules relating to capital-raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reports under the Williams Act. Its goal was to identify where the disclosure process could be simplified and, consistent with investor protection, to make regulation of capital formation more efficient. Following a seven-month review, the Task Force completed its report, including a number of recommendations, which the Commission authorized for publication on March 5, 1996. This report is available for inspection and copying at the Commission's public reference room. It also is available through the Commission's Internet web site [http://www.sec.gov].

[22] The Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes was established in February 1995. See Release No. 33–7135 (February 17, 1995) [60 FR 9415]. The objective of the Committee is to assist the Commission in evaluating the efficiency of the regulatory process relating to public offerings of securities, secondary market trading and corporate reporting. The Committee's focus has been the development of a company registration system for adoption by the Commission, which would allow eligible companies to offer and sell securities relying on a more company-focused, as opposed to transaction-focused, system. The Committee plans to issue a report containing its recommendations in the near future.

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

3. 17 CFR Parts 240 and 249 are amended by removing the reference to ''$5 million'' and adding in its place ''$10 million'' in the following sections:

(a) 17 CFR 240.12g–1
(b) 17 CFR 240.12g–4(a)(1)(ii)
(c) 17 CFR 240.12g–4(a)(2)(ii)
(d) 17 CFR 240.12h–3(b)(1)(ii)
(e) 17 CFR 240.12h–3(b)(2)(ii)
(f) 17 CFR 249.323(a)

Dated: May 1, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–11625 Filed 5–9–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7285; File No. S7–15–95]

RIN 3235–AG51

Exemption for Certain California Limited Issues

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: In order to reduce regulatory burdens associated with certain offers and sales of securities, the Securities and Exchange Commission (''Commission'') today is adopting a new exemption from its registration requirements for limited offerings of up to $5 million that are exempt from qualification under a 1994 California state securities law.

EFFECTIVE DATE: The effective date of Rule 1001 and the amendment to Rule 144 will be effective June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting, as proposed, new Rule 1001[1] under Section 3(b)[2] of the Securities Act of 1933 (''Securities Act'').[3] The new rule exempts from the registration requirements of the Securities Act offers and sales up to $5 million that are exempt from state qualification under paragraph (n) of Section 25102 of the California Corporations Code.[4] Securities Act Rule 144[5] also has been amended to include securities issued in reliance upon Rule 1001 in the definition of ''restricted securities.''

I. Introduction

In June 1995, pursuant to its authority to provide exemptions for small offerings under Section 3(b) of the Securities Act, the Commission proposed a new rule[6] designed to assist small businesses' capital raising ability by creating a federal exemption for offerings of up to $5 million[7] that meet the qualifications of a California exemption. The California law provides an exemption from state law registration for offerings made to specified classes of qualified purchasers that are similar, but not the same as, accredited investors under Regulation D.[8] Certain methods of general solicitation are permitted under the California law.

The Commission received ten comment letters, which generally were supportive of the proposals.[9] The Commission believes that the California exemption has the potential to facilitate small business capital raising. It is anticipated that the new rule will result in compliance cost savings for small businesses and others because qualifying issuers will be exempt from both state qualification and federal registration. At the same time, the exemption assures adequate protections to investors. Therefore, the Commission is exercising its exemptive authority in Section 3(b) to provide a parallel federal exemption for the California exemption by adopting new Rule 1001.

II. The California Exemption

On September 26, 1994, an exemption from the issuer transactions qualification provisions of the California Corporations Code became effective.[10] The provision was specifically designed ''to facilitate the ability of small companies to raise capital to finance their growth.''[11]

The exemption generally is limited to issuers that are California corporations or any other form of business entity organized in that state, including partnerships and trusts. In addition, non-California organized businesses may use the exemption if they can attribute more than 50 percent of property, payroll and sales to California and if more than 50 percent of outstanding voting securities of the issuer are held of record by persons having addresses in California. It is not available for offerings relating to a rollup transaction, nor may it be used by ''blind pool'' issuers or investment companies subject to the Investment Company Act of 1940 (the ''Investment Company Act'').[12]

Sales under the exemption must be effected only to qualified purchasers who buy for investment purposes and not for redistribution. A qualified purchaser is defined as:

- Designated professional or institutional purchasers or persons affiliated with the issuer;[13]
- Certain relatives residing with qualified purchasers;
- Promoters;
- Any person purchasing more than $150,000 of securities in the offering;[14]
- Entities whose equity owners are limited to officers, directors and any affiliate of the issuer;
- Reporting companies under the Securities Exchange Act of 1934 (the ''Exchange Act''),[15] if the transaction

[1] The rule is being added as Regulation CE (for coordinated exemptions), 17 CFR 230.1001, rather than as Regulation CA, as proposed.

[2] 15 U.S.C. 77c(b).

[3] 15 U.S.C. 77a *et seq.*

[4] Cal. Corporations Code Section 25102(n).

[5] 17 CFR 230.144.

[6] Release No. 33–7185 (June 27, 1995) [60 FR 35638] (''proposing release'').

[7] This is the maximum dollar amount permitted under the Commission's Section 3(b) exemptive authority.

[8] 17 CFR 230.501–230.508.

[9] The letters and comment summary are available for inspection and copying in the Commission's public reference room. Refer to File No. S7–15–95.

[10] Chapter 828, Statutes of 1994 (Senate Bill 1951—Killea), adding subdivision (n) to Corporations Code Section 25102.

[11] Section 3, Senate Bill 1951.

[12] 15 U.S.C. 80a-1 et seq.

[13] Officers and directors of corporate issuers (or persons performing similar duties); general partners and trustees, where the issuer is a partnership or a trust; small business investment companies; business development companies subject to the Investment Company Act; private venture capital companies exempted from the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*]; entities comprised of accredited investors; banks; savings and loan associations; insurance companies; Investment Company Act companies; non-issuer pension or profit-sharing trusts; and, organizations (corporations, business trusts or partnerships) described in Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] with assets of more than $5 million. Individuals with a net worth of $1 million or annual income of more than $200,000 also are qualified purchasers under the California exemption. All these persons would qualify as ''accredited investors'' under Rule 501(a) [17 CFR 230.501(a)].

[14] These persons must also satisfy one of the following additional suitability standards: (1) They must have, alone or with the assistance of a professional advisor, the capacity to protect their own interests; (2) they must have the ability to bear the economic risk of the investment; or (3) the investment must not exceed 10 percent of the person's net worth. These criteria also apply to individuals who have a net worth of over $1 million or annual income exceeding $200,000.

[15] 15 U.S.C. 78a *et seq.*

involves the acquisition of all of an issuer's capital stock for investment;

• A natural person whose net worth exceeds $500,000, or a natural person whose net worth exceeds $250,000 if such purchaser's annual income exceeds $100,000—in either case the transaction must involve:

(a) Only a one-class voting stock (or preferred establishing the same voting rights),

(b) An amount limited to no more than 10 percent of the purchaser's net worth, and

(c) A purchaser able to protect his or her own interests (alone or with the help of a professional advisor); [16]

• Pension and profit sharing trusts, as well as 401(k) plans [17] and Individual Retirement Accounts of individual qualified purchasers.

Issuers must provide certain purchasers who are natural persons [18] a disclosure document as specified in Rule 502 of Regulation D [19] five days prior to any sale or commitment to purchase.

Offers, oral or written, are generally limited to qualified purchasers. However, the law does permit general announcements of a proposed offering to be widely published and circulated, so long as they contain only specified information. [20] This general announcement process is modeled on the ''test the waters'' concept being used by several of the states [21] and by the Commission in connection with Regulation A.

A notice must be filed with the California Corporations Commissioner at the initial offer of securities or with the publication of a general announcement of proposed offering, whichever comes first, accompanied by a $600 filing fee. A second filing is required within 10 business days after the close or abandonment of the offering, and in no case later than 210 days after the filing of the initial notice.

III. Regulation CE and Rule 1001

A. Need for a New Exemption

The California exemption combines a form of general solicitation using a ''test the waters'' concept with a qualified purchaser concept derived in part from the Uniform Limited Offering Exemption (''ULOE''), [22] an official policy guideline of the North American Securities Administrators Association, Inc. (''NASAA'') [23] that was adopted in coordination with the Commission's adoption of Regulation D. [24] California's exemption does not fit well within any current federal exemption, other than Rule 504, [25] which is limited to $1 million, or potentially the intrastate offering exemption. [26] Rules 505 and 506 of Regulation D prohibit general solicitations; moreover, California's definition of qualified purchasers is broader than Regulation D's. The intrastate offering exemption is available only for those offerings by issuers incorporated and doing business in California.

The Commission does not believe that these differences need to be an impediment to the ability of small businesses to take full advantage of the California exemption. While the qualified purchaser definition differs somewhat from the accredited investor definition for individuals, the California law includes additional suitability standards. Moreover, the general announcement of proposed offering is subject to significant limitation, thereby protecting against abuse of the procedure. The provisions of the California law are consistent with investor protection and the public interest, and therefore warrant the Commission's full exercise of its exemptive authority under Section 3(b).

B. The Exemption

New Rule 1001 provides that offers and sales of securities, in amounts of up to $5 million, that are exempt from registration under the California securities law pursuant to paragraph (n) of section 25102 of the California Corporations Code [27] are exempt from the registration requirements of Section 5 of the Securities Act, pursuant to Section 3(b) of that Act. [28] All issuers that qualify for the state exemption can rely on the Rule 1001 exemption. [29] Issuers should look to the state of California for interpretations relating to who qualifies for the exemption, since any person who lawfully relies on the state exemption also could rely on its federal counterpart. Commenters who spoke to the issue supported the Commission's proposal not to impose additional qualifying standards.

As in the proposal, the final rule does not require issuers to notify the Commission when they rely on the California exemption in view of the notification provisions of the California law.

C. Computation of $5 million amount

Rule 1001 exempts offerings up to $5 million, the maximum allowed under Section 3(b). [30] The $5 million limit will apply on an offering-by-offering basis. [31]

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[16] This provision states that each such natural person, by reason of his or her business or financial experience, or the business or financial experience of his or her professional advisor (who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer), can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The California Department of Corporations has indicated that qualified investors under this rubric must have business or financial experience or rely on a professional advisor. Release No. 94–C (September 27, 1994).

[17] 26 U.S.C 401(k).

[18] This delivery requirement is limited to those natural persons designated as qualified purchasers because their net worth exceeds $500,000, or whose net worth exceeds $250,000 where there is an annual income of $100,000.

[19] 17 CFR 230.502(b)(2).

[20] The California provision limits the content of the general announcement to the following items: the issuer's identity; the full title of the securities being offered; the suitability standards of prospective investors; a statement that no money is being sought or will be accepted, that an indication of interest involves no commitment to purchase and that under certain circumstances a disclosure document will be provided prior to purchase; and the name, address and telephone number of a person who can provide further information about the offering. Only the following additional information may be included at the issuer's option: a brief description of the business, its geographical location and the offering price or method of determination.

[21] *See* CCH NASAA Reports § 7036. Arizona, Colorado, Kansas, Massachusetts, Oregon, Pennsylvania, Vermont, Virginia and Washington currently are participating in a pilot program in this regard, and Indiana has proposed entering this pilot program as well.

[22] *See* CCH NASAA Reports § 6201.

[23] NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and several of the Canadian provinces.

[24] State statutes and rules based on NASAA's ULOE exempt offers or sales of securities made in compliance with Rules 501–503, 505 and/or 506 of Regulation D [17 CFR 230.501–230.503, 230.505 and 230.506 respectively], including the prohibition of general solicitations found in Rule 502(c).

[25] 17 CFR 230.504.

[26] Securities Act Section 3(a)(11) [15 U.S.C. 77c(a)(11)] and Rule 147 [17 CFR 230.147].

[27] One commenter expressed the view that the Commission should key the exemption to section 25102(n) as it existed at the time it originally became effective. The Commission has determined to adopt Rule 1001 as proposed in order to allow California flexibility to address concerns relating to its exemption without fear of losing the federal counterpart. Nevertheless, the Commission will monitor future changes to the California exemption to assure that the investor protections are not diminished in a fashion that would warrant modification of the federal exemption.

[28] Rule 1001(a). While the transactions would not be subject to registration under Section 5, the antifraud provisions of the federal securities laws would continue to be applicable to all exempt transactions. See preliminary note 1 to Rule 1001. Rule 1001 would provide an exemption only for the transactions in which the securities are offered or sold by the issuer; it is not an exemption for the securities themselves.

[29] As noted above, California law precludes reliance on the exemption in connection with investment company, blind pool or roll-up offerings; thus, the Rule 1001 exemption also would be unavailable in those cases.

[30] Where a transaction involves non-cash consideration, the amount of the offering would be calculated as provided under California law.

[31] Standard integration analysis concepts would apply. See Release No. 33–4552 (November 7, 1962)

Continued

Commenters supported this approach, which differs from that applied in other Section 3(b) rules, where an annual dollar limit for the aggregate of various Section 3(b) offers has been used.[32]

D. Resale limitations

The new exemption provides that purchasers in the exempt transaction receive ''restricted securities.'' [33] Consequently, purchasers must either register subsequent resales of the securities or have an exemption for such sales. Categorizing the securities offered and sold pursuant to Rule 1001 as ''restricted'' is consistent with the California exemption, since the latter requires an investment intent on the part of purchasers in the offering, and such shares could not be resold under California law without qualification or some other exemption under such law. In addition, the treatment is consistent with other federal exemptions, the availability of which depends on the sophistication, wealth or institutional character of the investor.[34]

IV. Other Matters Addressed in the Proposing Release

A. Exemptions for Other States

The Commission proposed to provide the same exemption for each state that enacts a transaction exemption incorporating the same standards used by California. To date, the Commission has not received any request from a state other than California seeking its own exemption. The Commission reiterates its desire to cooperate with the states and repeats its position that it will create an exemption for any state that adopts an exemption incorporating the same standards used by California. Separate consideration for a federal exemption will be given to states that adopt other similar exemptions that protect the public interest.[35]

B. General Solicitation under Regulation D and ULOE

While not included as a rule proposal, the Commission indicated in the proposing release that it was considering whether amendments to Regulation D should be proposed that would facilitate better use of the exemptions by revising or eliminating the prohibition against general solicitation for Rule 505 and 506 offerings. This question was prompted in part by the approach in the California exemption that allows a form of general solicitation followed by sales only to qualified purchasers. Comment also was sought as to whether the Commission should consult with the states and NASAA about modifying ULOE, which also prohibits general solicitations in these offerings.

A number of commenters supported relaxing the general solicitation prohibition, believing that it would enhance the utility of Rule 505 and 506 offerings. The Commission has determined to proceed with adoption of the California exemption at this time while deferring action on the general solicitation question with respect to other exemptions, since Section 3(b) does not prohibit general solicitation for offerings exempt thereunder. However, these comments will be considered in connection with future initiatives undertaken by the Commission as it evaluates the reports of the Task Force on Disclosure Simplification [36] and the Advisory Committee on the Capital Formation and Regulatory Processes.[37] The work of both of these groups has been dedicated to reassessing and reforming the federal securities disclosure regime where necessary and appropriate in the public interest and consistent with investor protection.

V. Cost-Benefit Analysis

The Commission solicited comments to aid in its evaluation of the costs and benefits that would result from the proposed exemption. It was expected that compliance burdens would decrease with respect to issuers who qualify for the proposed exemption, inasmuch as they would be able to raise up to $5 million in capital without the burden and expense of compliance with the registration and reporting requirements of the federal securities laws. Commenters supported that view, indicating that the exemption would be beneficial to small business by reducing their capital raising expenses without reducing investor protection. Consequently, the Commission has determined to adopt the rule as proposed.

VI. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604 concerning the adoption of Rule 1001 exemption and the amendment to Rule 144. A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Basis for the Rules

Regulation CE, Rule 1001 and the amendment to Rule 144 are adopted pursuant to Sections 3(b) and 19 of the Securities Act.

List of Subjects in 17 CFR Part 230

Registration requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 89a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

[27 FR 11316]. These concepts are currently under review in connection with the work of the Task Force on Disclosure Simplification and the Advisory Committee on the Capital Formation and Regulatory Processes. See notes 37 and 37, below.

[32] See, *e.g.*, Rule 251(b) [17 CFR 230.251(b)], Rule 504(b)(2) [17 CFR 230.504(b)(2)] and Rule 505(b)(2)(i) [17 CFR 230.505(b)(2)(i)].

[33] Rule 1001(c) and amendment to Rule 144.

[34] See, *e.g.*, Section 4(6) of the Exchange Act [15 U.S.C. 78d(6)] and Securities Act Rule 506.

[35] Three commenters supported this approach. Two commenters, however, believed that the Commission should not proceed on a state-by-state basis; rather, it should take a broader approach by creating a federal exemption that the individual states could then use to fashion their own coordinated exemptions. The Commission will consider this suggestion, together with others put forward by commenters with respect to facilitating small business capital formation, in connection with future rulemaking projects.

[36] The Task Force on Disclosure Simplification was organized in August 1995 to review forms and rules relating to capital-raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reports under the Williams Act. Its goal was to identify where the disclosure process could be simplified and, consistent with investor protection, to make regulation of capital formation more efficient. Following a seven-month review, the Task Force completed its report, including a number of recommendations, which the Commission authorized for publication on March 5, 1996. This report is available for inspection and copying at the Commission's public reference room. It also is available through the Commission's Internet web site [http://www.sec.gov].

[37] The Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes was established in February 1995. See Release No. 33–7135 (February 17, 1995) [60 FR 9415]. The objective of the Committee is to assist the Commission in evaluating the efficiency of the regulatory process relating to public offerings of securities, secondary market trading and corporate reporting. The Committee's focus has been the development of a company registration system for adoption by the Commission, which would allow eligible companies to offer and sell securities relying on a more company-focused, as opposed to transaction-focused, system. The Committee plans to issue a report containing its recommendations in the near future.

2. By amending § 230.144 by removing the period at the end of paragraph (a)(3)(iv) and adding ''; or'' in its place and by adding paragraph (a)(3)(v), to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) * * *

(v) Securities acquired from the issuer that are subject to the resale limitations of Regulation CE (§ 230.1001).

* * * * *

3. By adding a new undesignated center heading and § 230.1001, to read as follows:

Regulation CE—Coordinated Exemptions for Certain Issues of Securities Exempt Under State Law

§ 230.1001 Exemption for transactions exempt from qualification under § 25102(n) of the California Corporations Code.

Preliminary Notes: (1) Nothing in this section is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors necessary to satisfy the antifraud provisions of the federal securities laws. This section only provides an exemption from the registration requirements of the Securities Act of 1933 (''the Act'') [15 U.S.C. 77a *et seq.*].

(2) Nothing in this section obviates the need to comply with any applicable state law relating to the offer and sales of securities.

(3) Attempted compliance with this section does not act as an exclusive election; the issuer also can claim the availability of any other applicable exemption.

(4) This exemption is not available to any issuer for any transaction which, while in technical compliance with the provision of this section, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (n) of § 25102 of the California Corporations Code, and paragraph (b) of this section, shall be exempt from the provisions of Section 5 of the Securities Act of 1933 by virtue of Section 3(b) of that Act.

(b) *Limitation on and computation of offering price.* The sum of all cash and other consideration to be received for the securities shall not exceed $5,000,000, less the aggregate offering price for all other securities sold in the same offering of securities, whether pursuant to this or another exemption.

(c) *Resale limitations.* Securities issued pursuant to this § 230.1001 are deemed to be ''restricted securities'' as defined in Securities Act Rule 144 [§ 230.144]. Resales of such securities must be made in compliance with the registration requirements of the Act or an exemption therefrom.

Dated: May 1, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–11626 Filed 5–8–96; 8:45 am]

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